

**45-1-107. Powers and duties of commissioner.**

(a) In addition to other powers conferred by this title, the commissioner has the power to:

(1) Interpret the provisions of this chapter and chapter 2 of this title, and regulate banking practices thereunder;

(2) Restrict the withdrawal of deposits from all or one (1) or more state banks where the commissioner finds that extraordinary circumstances make the restriction necessary for the proper protection of depositors in the affected institutions;

(3) Authorize a state bank to participate in a public agency hereafter created under the laws of this state or of the United States, the purpose of which is to afford advantages or safeguards to banks or to depositors and to comply with all requirements and conditions imposed upon the participants;

(4) Order any person to cease violating a provision of this title or lawful regulation issued under this title;

(5) Order any person to cease and desist from engaging in any unsafe or unsound banking practice when the practice is likely to cause insolvency or dissipation of assets or earnings of a state bank or is likely to otherwise seriously prejudice the interests of the depositors of a state bank; and

(6) Bring an action in the chancery court of Davidson County to enjoin any act or practice in or from this state that constitutes a violation of any provision of law or any rule or order that the department has the duty to execute pursuant to § 45-1-104. The court may not require the commissioner to post a bond in bringing the action. Upon a proper showing by the commissioner, the court shall grant a permanent or temporary injunction, restraining order, writ of mandamus, disgorgement, or other proper equitable relief including the recovery by the commissioner of costs and attorney fees. Further, to the extent that this subdivision (a)(6) does not conflict with other provisions of this title, a receiver or conservator may be appointed for the defendant or the defendant's assets.

(b) The commissioner may remove a director, trustee, officer or employee of a state bank who becomes ineligible to hold the position or who, after receipt of an order to cease under subsection (a), violates this title or a lawful regulation or order issued under this title, or who is dishonest. It is a criminal offense against the state for any such persons, after receipt of a removal order, to perform any duty or exercise any power of any state bank for a period of three (3) years. A removal order shall specify the grounds of removal and a copy of the order shall be sent to the bank concerned.

(c) Notice and opportunity for a hearing shall be provided in advance of any of the foregoing actions in this section taken by the commissioner, except the formulation of regulations of general application. In cases involving extraordinary circumstances requiring immediate action, the commissioner may take the action but shall promptly afford a subsequent hearing upon application to rescind the action taken.

(d) The commissioner may, on petition of any interested person and after hearing, issue a declaratory order with respect to the applicability to any person, property or state of facts under this title or a rule issued by the commissioner. The order shall bind the commissioner and all parties to the proceeding on the state of facts alleged unless it is modified or reversed by a court. A declaratory order may be reviewed and enforced in the same manner as other orders of the commissioner, but the refusal to issue a declaratory order

shall not be reviewable.

(e) In addition to other powers conferred by this title, the commissioner has power to require a state bank to:

(1) Maintain its accounts in accordance with regulations that the commissioner prescribes, having regard to the size of the organization;

(2) Observe methods and standards that the commissioner prescribes for determining the value of various types of assets;

(3) Charge off the whole or part of an asset that at the time of the commissioner's action could not lawfully be acquired;

(4) Write down an asset to its market value;

(5) Record liens and security in property or at the option of the bank, insure against losses from not recording;

(6) Obtain a financial statement from a prospective borrower to the extent that the bank can do so;

(7) Search, or obtain insurance of, the title to real estate taken as security;

(8) Maintain adequate insurance against other risks that the commissioner determines to be necessary and appropriate for the protection of depositors and the public; and

(9) Call a special meeting of the shareholders.

(f) The commissioner has the power to subpoena witnesses, compel their attendance, require the production of evidence, administer an oath and examine any person under oath in connection with any subject relating to duty imposed upon or a power vested in the commissioner. These powers shall be enforced by a court of competent jurisdiction of the county in which the hearing is held.

(g) No person shall be subjected to any civil or criminal liability for any act or omission to act in good faith in reliance upon a subsisting order, regulation or definition of the commissioner, notwithstanding a subsequent decision by a court invalidating the order, regulation or definition.

(h) The commissioner is granted the power to enact reasonable substantive and procedural rules to carry out the purposes of any and all chapters within the commissioner's regulatory authority as conferred by law. This power shall specifically include, but not be limited to, the authority to establish a schedule of fees to be charged by the department relative to notifications or applications to be reviewed by the department. The promulgation shall be done in conformity with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(i)(1) The commissioner may accept payments to the department by credit card, debit card, electronic funds transfer, electronic check or other electronic means. The commissioner may adopt reasonable policies and rules governing the manner of acceptance of such payments.

(2) The commissioner may enter into appropriate agreements with card issuers or other appropriate parties as needed to facilitate the acceptance of payments authorized under this subsection (i). The commissioner may impose and collect a convenience fee from any person making payment by credit card, debit card, electronic funds transfer, electronic check or other electronic means in order to offset the actual administrative fees and costs incurred by the department for accepting or processing such payments. Notwithstanding any law to the contrary, the convenience fee shall be charged in addition to all other fees, penalties, taxes and costs required by law.

(3) The commissioner also may enter into appropriate agreements with third-party service providers for the acceptance and processing of payments made by credit card, debit card, electronic funds transfer, electronic check or other electronic means. Such agreements may authorize third-party service providers to impose and collect a convenience fee from persons making such payments.

(4) When a person elects to make a payment to the department by credit card, debit card, electronic funds transfer, electronic check or other electronic means and a convenience fee is imposed and collected as authorized by this subsection (i), the payment of the convenience fee shall be deemed voluntary and shall not be refundable.

**45-1-130. License, certification or registration — Notifications — Prerequisites — Web site.**

(a) The department and each board, commission, agency or other governmental entity created pursuant to this title shall notify each applicant for a professional or occupational license, certification or registration from the department, board, commission, agency or other governmental entity where to obtain a copy of any statutes, rules, guidelines, and policies setting forth the prerequisites for the license, certification or registration and shall, upon request, make available to the applicant a copy of the statutes, rules, guidelines, and policies.

(b) The department and each board, commission, agency or other governmental entity created pursuant to this title shall notify each holder of a professional or occupational license, certification or registration from the board, commission, agency or other governmental entity of changes in state law that impact the holder and are implemented or enforced by the entity including newly promulgated or amended statutes, rules, policies, and guidelines, upon the issuance and upon each renewal of a holder's license, certification or registration.

(c) The department and each board, commission, agency or other governmental entity created pursuant to this title shall establish and maintain a link or links on the entity's web site to the statutes, rules, policies, and guidelines that are implemented or enforced by the entity and that impact an applicant for, or a holder of, a professional or occupational license, certification, or registration from the entity.

(d)(1) The department and each board, commission, agency, or other governmental entity created pursuant to this title shall allow each holder of a professional or occupational license, certification or registration from the department, board, commission, agency or other governmental entity to have the option of being notified by electronic mail of:

(A) Renewals of the holder's license, certification or registration;

(B) Any fee increases;

(C) Any changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies and guidelines; and

(D) Any meeting where changes in rules or fees are on the agenda. For purposes of this subdivision (d)(1)(D), the electronic notice shall be at least forty-five (45) days in advance of the meeting, unless it is an emergency meeting then the notice shall be sent as soon as is practicable.

(2) The department and each board, commission, agency or other governmental entity created pursuant to this title shall notify each holder of a license, certification or registration of the availability of receiving electronic notices pursuant to subdivision (d)(1) upon issuance or renewal of the holder's license, certification or registration.

**45-2-303. Items allowed in the charter of a bank — Required language if bank amends its charter — Shareholder consent to release of information — No fee for approving charter amendment — Right of shareholder to be informed in writing of number of shares counted — Shareholder right to declaratory judgment regarding dispute about votes.**

(a) In addition to any provisions permitted or required by this chapter and the Tennessee Business Corporation Act, compiled in title 48, chapters 11-27, the charter of a bank may include all, but not less than all, of the following:

(1) The bank shall not disclose the name, address or number of shares of a bank shareholder, except as required or permitted by the Financial Records Privacy Act, compiled in chapter 10 of this title, and such information shall be deemed to be a financial record within the meaning of that act;

(2) No person shall solicit a proxy or written consent from any shareholder to vote shares of the bank, unless the information specified by the bank's bylaws is delivered to the bank and to the shareholders as a group no later than the date specified in the bank's bylaws. In adopting an informational requirement, a bank shall provide the information to all shareholders or specify a reasonable and timely method for a shareholder to communicate with other shareholders about bank business;

(3) If the bylaws state that the bank will communicate the information to the other shareholders on the shareholder's behalf, the bank may charge a reasonable fee to cover the cost of distribution, which shall be provided for in the bylaws; and

(4) The bank shall notify the requesting shareholder that it has provided the requested information to the other shareholders. The bank shall notify the requesting shareholder within seven (7) days after receiving the request and the information to be provided to the shareholders. The bylaws shall describe the means by which the bank will notify the requesting shareholders.

(b) If a bank amends its charter in accordance with subsection (a), the charter shall include the following language, in all capital letters and in at least twelve (12) point bold type:

**THE RECORD OF SHAREHOLDERS OF THIS BANK IS NOT SUBJECT TO INSPECTION AND COPYING IN ACCORDANCE WITH TENN. CODE ANN. § 48-26-102. IT IS A FINANCIAL RECORD AND MAY BE OBTAINED ONLY IN ACCORDANCE WITH THE FINANCIAL RECORDS PRIVACY ACT, COMPILED IN TENN. CODE ANN. §§ 45-10-101 ET SEQ.**

(c) If a shareholder of a bank, which amends its charter in accordance with subsection (a), notifies the bank in writing that the shareholder consents to the release of information in the shareholder record relating to such shareholder, the bank shall timely provide such information to any shareholder requesting

the information.

(d) If a bank adopts a charter amendment pursuant to subsection (a), the commissioner shall not charge a fee for approving the amendment.

(e) Any shareholder, if the bank's charter or bylaws expressly authorize shareholder actions by written consent, shall have the right to be informed in writing by the bank of the number of shares counted:

(1) Toward a quorum for a shareholders meeting;

(2) Regarding any nomination or proposal voted upon at a shareholders meeting; or

(3) Regarding an action taken by written consent.

(f) Any bank shareholder of record shall have the right to seek a declaratory judgment with respect to a bona fide dispute regarding votes described in subsection (e) in a court of record in the county in which the bank's main office or chief executive's office is located.

(g) For purposes of this section:

(1) "Bank" has the same meaning as provided in § 45-1-103, except that "bank" shall be deemed to include any controlling person;

(2) "Controlling person" has the same meaning as provided in § 45-2-103(a)(1); and

(3) "Person" has the same meaning as provided in § 45-2-103(a)(1).

(h) Nothing in this section shall in any way limit the authority held by the commissioner.

#### **45-2-607. Investments.**

(a) Investments by state banks shall be limited to:

(1) Obligations that satisfy the requirements of this chapter and chapter 1 of this title for loans;

(2) Obligations of the United States, a state of the United States or the Dominion of Canada;

(3) Obligations of the International Bank for Reconstruction and Redevelopment or the African Development Bank;

(4) Obligations of a territory of the United States, a province of the Dominion of Canada, a subdivision or instrumentality of a state or territory of the United States, an authority organized under state law, an interstate compact or by substantially identical legislation adopted by two (2) or more states;

(5) Obligations of a corporation chartered by the United States or a state thereof doing business in the United States;

(6) The stock of one (1) or more banks or corporations chartered or incorporated under the laws of the United States, or of any state of the United States, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States, either directly or through the agency, ownership or control of local institutions in foreign countries, or in the dependencies or insular possessions, including the stock of one (1) or more banks or corporations chartered or incorporated under § 25a of the Federal Reserve Act, as approved December 24, 1919. Any state bank shall have the power to acquire and hold directly or indirectly stock or other evidences of ownership in one (1) or more banks organized under the law of a foreign country or dependency or insular possession of the United States and not engaged directly or indirectly in any

activity in the United States, except that which is incidental to the international and foreign business of the foreign bank and to make loans or extension of credit to or for the account of the bank. Investments in the stock of banks or corporations under this subdivision (a)(6) shall not exceed in the aggregate ten percent (10%) of the state bank's paid-in capital stock and surplus;

(7) The capital stock of joint stock land banks for carrying on the business of lending money on farm mortgage security created and organized under the act of congress of the United States, approved July 17, 1916, and known as the Federal Farm Loan Act. Any bank, firm, person, or corporation doing a banking business may invest its funds and accumulations in stocks, notes, bonds, debentures, or other obligations issued under the act of congress of the United States entitled the Federal Home Loan Bank Act approved July 22, 1932, and in notes, bonds, debentures, or other obligations issued under title IV of the act of congress of the United States entitled the National Housing Act, approved June 27, 1934;

(8) Stock, debentures, and other obligations of national mortgage associations or similar institutions now or hereafter organized under title III of the National Housing Act, to the same extent as national banks are now or hereafter permitted to invest in the stock and/or obligations;

(9) Real property to the extent that the total depreciated value thereof does not exceed the capital and surplus of the bank;

(10) Personal property acquired for lease to customers;

(11) The stock of any other bank located in the state of Tennessee; provided, that the investment in the stock of all the banks shall not exceed ten percent (10%) of the capital, surplus, and undivided profits of the investing bank; and provided further, that if the stock is voting stock, the investment shall not exceed five percent (5%) of the total of the voting stock. The investment shall be made only upon thirty (30) days' prior written notice to the commissioner of financial institutions, and any investment that is consummated without giving notice shall be void. The commissioner shall have the right to disapprove the investment if the commissioner finds that the investment does not conform with the standards set forth in §§ 45-1-102 and 45-1-107, and gives written notice detailing the reasons for disapproval on or before the end of the thirty-day period. If the commissioner disapproves the transaction, the bank shall have a right to a hearing before the commissioner under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. This investment shall be in addition to the right of any bank to invest in the stock of a banker's bank otherwise permitted under this section;

(12) Adjustable rate preferred stock of any publicly held corporation created or existing under the laws of the United States or any state, district, or territory of the United States that is rated in one (1) of the four (4) highest investment grades by one (1) or more recognized investment rating services approved by the commissioner for rating the investments. The bank's investment in adjustable rate preferred stock shall be permitted to the same extent the investments are permitted to national banks domiciled in Tennessee, subject to regulation by the commissioner for the purpose of maintaining the state bank's safety and soundness;

(13)(A) Shares or certificates in any open-end management investment company that is registered with the securities and exchange commission

under the Investment Company Act of 1940, and the portfolio of which is restricted by the management company's investment policy, changeable only if authorized by shareholder vote, solely to any investments in which a bank by law or regulation may invest;

(B) The bank's investment in the shares or certificates of the open-end investment companies shall be permitted to the same extent the investments are permitted to national banks domiciled in Tennessee, subject to limiting regulations promulgated by the commissioner pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the purpose of safety and soundness;

(14) Other investments that are authorized national banks or member banks of the federal reserve system;

(15) Subject to regulations promulgated by the commissioner for the purpose of maintaining the state bank's safety and soundness, a bank may invest in a Tennessee business and industrial development corporation (BIDCO) as provided in § 45-8-203; provided, that the investment in the stock of the BIDCO shall not exceed ten percent (10%) of the capital, surplus, and undivided profits of the investing bank. The investment shall be made only upon thirty (30) days' prior written notice to the commissioner and an investment that is consummated without giving notice shall be void. The commissioner shall have the right to disapprove the investment if the commissioner finds that the investment does not conform to the standards set forth in §§ 45-1-102 and 45-1-107 and gives written notice detailing the reasons for the disapproval on or before the end of the thirty-day period. If the commissioner disapproves the transaction, the bank shall have a right to a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. This investment shall be in addition to the right of any bank to invest in the stock of a bankers' bank, otherwise permitted under this section and in the stock of any other bank located in Tennessee, otherwise permitted by this section; and

(16) Stock, debentures, and other obligations of community development corporations subject to the rules the commissioner may prescribe.

(b) Any investment in property that is not authorized by subsection (a) may be acquired by any state bank to satisfy or protect a loan previously made in good faith and in the ordinary course of business. Property acquired in satisfaction of a loan shall be held subject to the following limitations:

(1) All property except real property shall be sold within six (6) months or such additional period as the commissioner may allow; and

(2)(A) Except as provided in subdivision (b)(2)(B), real property shall be sold within ten (10) years;

(B) If the bank holds the real property for a period longer than five (5) years, then after an initial five-year period, the bank, in reporting its financial status to the department, shall write off twenty percent (20%) of the appraised value of the real property each subsequent year it is held until the real property is either sold or the ten-year period has elapsed. Upon application of the bank, the commissioner may, in extraordinary circumstances, adjust or waive the percentage a bank shall write off the real property each year, may extend the period in which the real property may be held beyond ten (10) years, or any combination of the foregoing. If the commissioner reduces, waives, or adjusts the amount of write-off, the real property may not be carried at more than the appraised value of the

property;

(C) Real property which has been written off but not disposed of shall be maintained on the bank's books at some nominal value;

(D) If the bank's board of directors deem the real property owned to be a prudent investment for income or appreciation for the bank, the board may take action to maintain the real property on the bank's books as an investment, pursuant to subdivision (a)(9);

(E) Not more than one hundred twenty (120) days before or thirty (30) days after the date the parcel is acquired by the bank as real property owned, or from the date on which the bank legally acquires the real property for investment purposes, the bank shall obtain from an independent, qualified appraiser an appraisal of the parcel; provided, however, that:

(i) For parcels whose book value is two hundred fifty thousand dollars (\$250,000) or less, the bank may obtain an evaluation in lieu of an appraisal; and

(ii) For parcels whose book value is one hundred thousand dollars (\$100,000) or less, no appraisal or evaluation shall be required; and

(F) Within twelve (12) months from the date the bank acquires the real property, and every twelve (12) months thereafter for as long as the bank owns the real property, the bank shall obtain another appraisal or evaluation, whichever is appropriate as provided for in subdivision (b)(2)(E).

(c) As used in this section, "investment" means the purchase of any interest in any property of any nature principally for the purpose of deriving profit from changes in the value of the property or from dividends, interest or rent thereon, as distinguished from the purpose of using the property in the conduct of the business of a bank. Notwithstanding the foregoing, the investment by a bank or trust company in one (1) or more subsidiaries, or the underwriting of or dealing in certificates of deposit, bankers' acceptances or those securities that are permissible investments for a bank under subdivisions (a)(1)-(14), shall not constitute an investment within the meaning of this section.

(d)(1) In addition to the other provisions of this section, upon thirty (30) days' prior written notice to the commissioner, providing such detail as the commissioner may require, a bank may invest, in the aggregate, up to seventy-five percent (75%) of its unimpaired capital, surplus and undivided profits in the stock or purchase the assets of other corporations, firms, partnerships or companies, including limited liability corporations and limited liability partnerships, which are or will be:

(A) Primarily engaging in activities permissible for federally chartered financial institutions, their authorized subsidiaries or bank holding companies under applicable laws, rules, regulations or orders;

(B) Primarily engaging in activities of a financial nature, including, but not limited to, the transmission or processing of information, data or payments relating to the activities, all forms of securities activities not otherwise authorized, together with other activities that the commissioner shall determine and that may be permissible for other bank and non-bank financial institutions chartered by Tennessee or other states by regulation or order; or

(C) Engaging in any other activities approved by the commissioner.

(2) Unless denied by the commissioner within thirty (30) days following receipt of the written notice or upon approval prior to the expiration of the

thirty (30) days, a bank may complete its investment in the stock or purchase the assets of the other corporation, firm, partnership or company, or commence a new activity through an existing subsidiary. The commissioner may extend the thirty-day period for approval or denial, for an additional thirty-day period, by notifying the applicant if the commissioner determines that the proposed investment or activity raises issues that require additional information or additional time for analysis.

(3) The commissioner shall monitor the impact of activities and investments of banks approved under this section on the safety and soundness of the banks. Any stocks owned or hereafter acquired in excess of the limitations herein imposed shall be disposed of at public or private sale within six (6) months after the date of acquiring the stocks, and if not so disposed of, they shall be charged to profit and loss account, and no longer carried on the books as an asset. The limit of time in which the stocks shall be disposed of or charged off the books of the bank may be extended by the commissioner if, in the commissioner's judgment, it is for the best interest of the bank that the extension be granted.

(4) The commissioner may, as a condition of approving an investment under this section, impose limits on the loans that each bank can make to the corporation, firm or partnership.

(5) The commissioner shall maintain a public file, available for inspection at the department's offices, which shall contain a summary or synopsis of any application submitted under this subsection (d). The summary shall include only the name of the institution applying, the proposed activity and the decision of the commissioner.

(6) Any state or national bank or subsidiary that engages in an activity that subjects it to licensure and/or regulation under other than title 45, chapter 2, shall be subject to licensure and/or regulation on a basis that does not discriminate by the appropriate regulatory agency that licenses and/or regulates non-banks that engage in the same activity.

#### **45-2-1102. Limit of loans to any one borrower — Classified loans.**

(a)(1) Except as provided in this section, no state bank shall be allowed to lend to any one (1) person, firm or corporation (including loans to a firm or loans to the several members thereof) more than fifteen percent (15%) of its capital, surplus and undivided profits. However, the loans may be in excess of that percent, but not above twenty-five percent (25%) except as provided in subsection (b), if each specific loan in excess of fifteen percent (15%) is first submitted to and approved in advance in writing by the board of directors or by the finance committee of the bank and a record is kept of the written approval.

(2) No loan limit shall be applicable to any state bank in any situation or circumstance in which no loan limit is applicable to national banks.

(3) No loan limit shall be applicable to the extent that the loan or extension of credit is secured by a segregated deposit account in the lending bank.

(b)(1) Obligations of any person in the form of notes or drafts secured by shipping documents, warehouse receipts or other documents transferring or securing title covering readily marketable nonperishable staples shall be subject to a limitation equal to the percent of the sum of the lending bank's

capital, surplus, and undivided profits shown in column A below, when the market value of the staples securing the obligations is not at any time less than the percent of the face amount of the obligation shown in column B below:

<u>Column A</u>	<u>Column B</u>
25%	115%
30%	120%
35%	125%
40%	130%
45%	135%
50%	140%

(2) The exceptions listed in subdivision (b)(1) do not apply to obligations of any one (1) person, copartnership, association or corporation arising from the same staples, for more than ten (10) months.

(c)(1) Notwithstanding any other provision of law, a state bank or bank holding company may not sell a classified loan or participation in a classified loan to, or purchase the loan or participation from, another financial institution without obtaining the prior approval of the commissioner.

(2) For purposes of subdivision (c)(1):

(A) "Classified loan" means a loan that is designated "substandard," "doubtful," or "loss" in the most recent state or federal report of examination; and

(B) "Financial institution" means a bank, savings bank, savings and loan association or any subsidiary of those entities, industrial loan and thrift company, credit union, mortgage broker, mortgage banker, or leasing company accepting deposits, making or arranging loans and making or arranging leases.

(d)(1) The loan limit applicable to any one (1) person under this section shall take into consideration credit exposure arising from derivative transactions between the state bank and the person.

(2) For purposes of subdivision (d)(1), "derivative transaction" includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one (1) or more commodities, securities, currencies, interest or other rates, indices, or other assets.

#### **45-2-1603. Confidentiality, disclosure and reproduction of information.**

(a) The information obtained by the commissioner, or any bank examiner in making an examination into the affairs of the bank, shall be for the purpose of ascertaining the true condition of the affairs of the bank, shall be privileged and confidential, shall not be subject to subpoena, and shall not be disclosed by the party making the examination to any person, except that the examiner shall report the condition of the affairs of the bank to the commissioner, and except that the commissioner is authorized to make the following disclosures from reports of examination:

(1) Within the department in the course of official duties;

(2) To the federal deposit insurance corporation as provided in § 45-2-804 and to the federal reserve board, or its duly authorized representative, as

provided in § 45-2-505;

(3) To the federal reserve board, or its duly authorized representative, in the case of an application to form a bank holding company if the principal affiliate bank to be acquired is a state bank or to the federal reserve board in any other circumstance when the commissioner believes that disclosure is in the interest of sound banking regulation;

(4) To the United States comptroller of the currency, or the comptroller's duly authorized representative, in the case of an application of a state bank for conversion to a national charter or to the comptroller in any other circumstance when the commissioner believes that disclosure is in the interest of sound banking regulation;

(5) To the United States department of justice, federal bureau of investigation, state district attorneys general, Tennessee bureau of investigation or the attorney general and reporter in the case of any suspected criminal violations discovered during the course of an examination;

(6) In any administrative proceeding or court action filed by the commissioner or the department to which the commissioner is an actual party;

(7) To the directors of a state bank as provided in § 45-2-1602;

(8) The comptroller of the treasury or the comptroller's designee for the purpose of an audit of the department of financial institutions;

(9) The state treasurer and commissioner of finance and administration pursuant to § 9-4-402;

(10) To other state financial institutions regulatory agencies;

(11) To the federal consumer financial protection bureau, federal trade commission, United States department of labor and the securities and exchange commission, or their duly authorized representative, when the commissioner believes that disclosure is in the best interest of sound banking regulation;

(12) The department of commerce and insurance; and

(13) The United States department of justice, federal bureau of investigation, state district attorneys general, Tennessee bureau of investigation, state attorney general and reporter, internal revenue service, Tennessee office of homeland security, United States department of the treasury and the financial crimes enforcement network for purposes of information sharing to promote enforcement of and compliance with the Bank Secrecy Act, codified at 12 U.S.C. § 1829b, 12 U.S.C. §§ 1951-1959, and 31 U.S.C. §§ 5311-5332.

(b) Disclosures made under subsection (a) shall be made under safeguards designed to prevent further dissemination of confidential information. If any agency or department that has received confidential information under subsection (a) receives a valid subpoena to produce documents of the department of financial institutions or desires to use the documents in litigation, including, but not limited to, discovery proceedings, in which it is involved, the agency or department shall notify the department of financial institutions for permission to produce the documents. The commissioner may, in the commissioner's discretion, authorize the requesting agency or department to use the documents under a protective order approved by the commissioner and designed to prevent the unnecessary further dissemination of the documents.

(c) A bank may reproduce all or any part of a report of examination and send or deliver the reproduction to a bank holding company of which it is a subsidiary, and may also send or deliver the reproduced information to the bank's consultants, external auditors and legal counsel. The disclosure shall

not affect the confidential nature of the disclosed information.

(d) As used in this section, unless the context otherwise requires:

(1) "Bank holding company" has the same meaning as in § 45-2-1402; and

(2) "Subsidiary," with respect to a specified bank holding company, means:

(A) Any company, twenty-five percent (25%) or more of whose voting shares, excluding shares owned by the United States or by any company wholly owned by the United States, is directly or indirectly owned or controlled by the bank holding company, or is held by it with power to vote;

(B) Any company in which the election of a majority of whose directors is controlled in any manner by the bank holding company; or

(C) Any company with respect to the management or policies of which the bank holding company has the power, directly or indirectly, to exercise a controlling influence, as determined by the commissioner, after notice and opportunity for hearing.

(e) Notwithstanding any provision of this section to the contrary, the commissioner may, in the commissioner's discretion and in the interest of justice, and when under a validly issued subpoena, waive the privilege created herein and produce bank examination reports and other related documents under the provisions of a protective order entered by a court or administrative tribunal of competent jurisdiction where the order is designed to protect the confidential nature of the information so disclosed from public dissemination.

(f) Notwithstanding any other provision of the law to the contrary, confidential information regarding insurance, securities and investment functions of financial institutions, and known or suspected violations of the insurance, banking or securities laws, may be shared among the departments of financial institutions and commerce and insurance, the district attorneys general for the respective counties, the Tennessee bureau of investigation and the attorney general and reporter. Information disclosed by the commissioner under this section shall not become matters of public record by virtue of the disclosure absent a waiver by the commissioner, or a protective order as provided for in this section.

#### **45-4-205. Compensation of board and committees.**

(a) No member of the credit or supervisory committee shall receive any compensation for services as a member of the committee.

(b) As an alternative to the reimbursement for members of the board of directors in subsection (c), each member of the board of directors may be compensated subject to the following conditions:

(1) The board shall adopt a resolution stating that the credit union requires expertise among board members for the prudent general management of the affairs, funds and records of the credit union;

(2) Such compensation shall be payable to board members elected after the adoption of the resolution in subdivision (b)(1);

(3) The credit union shall adopt a policy governing the participation and attendance that a board member shall comply with in order to receive compensation; and

(4) The annual report of the credit union's income and expenses shall include board member compensation as a specific expense item.

(c) Notwithstanding subsection (a), the board of directors may provide that the credit union shall reimburse any member of the board of directors or the

credit or supervisory committee for any loss of earnings caused by time spent in the service of the credit union, in an amount that the board of directors may determine, not to exceed the amount of the lost earnings.

**45-7-211. Renewal of license and annual report — Exemptions.**

(a) The commissioner shall, by rule, establish an annual fee for renewal of a license under this part.

(b) Licenses issued or renewed pursuant to this chapter shall expire on December 31. Each license may be renewed for the ensuing twelve-month period upon application by the license holder showing continued compliance with the requirements of § 45-7-205, including the security device adjusted in accordance with § 45-7-208, and the payment of the license renewal fee to the commissioner.

(c) Licenses issued or renewed under the former provisions of this chapter shall instead expire on December 31, 2013.

(d) The licensee must include in its renewal application:

(1) A copy of its most recent audited unconsolidated annual financial statement (including balance sheet, statement of income or loss, statement of changes in shareholder's equity and statement of changes in financial position), except that a licensee may provide the most recent audited consolidated annual financial statement of the parent corporation if the statement separately includes the balance sheet, statement of income or loss, statement of changes in shareholder's equity and statement of changes of financial position of the licensee. A licensee who does not transmit money in this state through more than an aggregate of four (4) locations may provide a financial statement certified by the owner or manager of the licensee;

(2) For the most recent quarter for which data is available prior to the date of the filing of the renewal application, but in no event more than one hundred twenty (120) days prior to the renewal date, the licensee must provide the number of payment instruments sold by the licensee in the state, the dollar amount of those instruments and the dollar amount of those instruments currently outstanding;

(3) Any material changes to any of the information submitted by the licensee on its original application that have not previously been reported to the commissioner on any other report required to be filed under this part;

(4) A list of the licensee's permissible investments;

(5) A list of the locations within this state at which business regulated by this part is conducted by either the licensee or its authorized agent;

(6) Notification of material litigation or litigation relating to money transmission; and

(7) Other information the commissioner may deem appropriate for the proper enforcement of this part.

(e) Failure to pay the renewal fee or to submit a completed renewal application between November 1 and December 31 shall cause the license to expire at the close of business on December 31.

(f) If an applicant for license renewal under this part was engaged in the business of selling or issuing money orders on April 30, 1995, at not more than four (4) locations, and if the applicant possessed a duly issued license to engage in the business as was required at the time by § 45-7-102, and if the applicant

currently engages in the business of money transmission at not more than four (4) locations, then the applicant shall not be required to submit an audited financial statement pursuant to this section.

**45-7-227. Requirement of licensing through a multi-state automated licensing system.**

(a) In addition to any other powers imposed upon the commissioner by law, the commissioner is authorized to require persons subject to this chapter to be licensed through a multi-state automated licensing system. Pursuant to this authority, the commissioner may:

(1) Promulgate whatever rules and regulations are reasonably necessary for participation in, transition to or operation of a multi-state automated licensing system;

(2) Establish relationships or enter into agreements that are reasonably necessary for participation in, transition to, or operation of a multi-state automated licensing system. The agreements may include, but are not limited to, operating agreements, information sharing agreements, inter-state cooperative agreements, and technology licensing agreements;

(3) Require that applications for licensing under this chapter and renewals of such licenses be filed with a multi-state automated licensing system;

(4) Require that any fees required to be paid under this chapter be paid through a multi-state automated licensing system;

(5) Establish deadlines for transitioning licensees to a multi-state automated licensing system. The commissioner has the authority to deny any applications or renewal applications not filed with a multi-state automated licensing system after such deadlines have passed, notwithstanding any dates established elsewhere in this chapter. The commissioner shall, however, provide reasonable notice of any transition deadlines to licensees; and

(6) Take such further actions as are reasonably necessary to give effect to this section.

(b) Nothing in this section shall authorize the commissioner to require a person who is not subject to this chapter to submit information to, or to participate in, a multi-state automated licensing system that is operated or participated in pursuant to this chapter.

(c) Notwithstanding any other provision of this section, the commissioner retains full authority and discretion to license persons under this chapter and to enforce this chapter to its fullest extent. Nothing in this section shall be deemed to be a reduction or derogation of that authority and discretion.

(d) Applicants for, and holders of, licenses issued under this chapter shall pay all costs associated with submitting an application to or transitioning a license to a multi-state automated licensing system, as well as all costs required by a multi-state automated licensing system for maintaining and renewing any license issued by the commissioner on a multi-state automated licensing system.

**45-7-228. Use of multi-state automated licensing system as agent for channeling information.**

The commissioner is authorized to use a multi-state automated licensing system as an agent for channeling information, whether criminal or noncriminal in nature, whether derived from or distributed to the United States

department of justice or any other state or federal governmental agency, or any other source, that the commissioner is authorized to request or distribute under this chapter.

**45-7-229. More effective regulation and reduction of regulatory burden through supervisory information sharing.**

In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing:

(1) The requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to a multi-state automated licensing system, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to the information or material after the information or material has been disclosed to a multi-state automated licensing system. The information or material may be shared with all state and federal regulatory officials with money transmission oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law, including the protection available under §§ 45-1-120 and 45-7-216;

(2) For purposes of subdivision (1), the commissioner is authorized to enter into agreements or sharing agreements with other governmental agencies, the Conference of State Bank Supervisors or other associations representing governmental agencies as established by rule, regulation or order of the commissioner;

(3) Information or material that is subject to a privilege or confidential under subdivision (1) shall not be subject to:

(A) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or any agency of the federal government or the respective state; or

(B) Subpoena or discovery or admission into evidence in any private civil action or administrative process, unless with respect to any privilege held by a multi-state automated licensing system applicable to such information or material, the person to whom such information or material pertains waives that privilege, in whole or in part, in the discretion of such person;

(4) This section shall supersede any inconsistent provisions of title 10, chapter 7, part 5, pertaining to the records open to public inspection;

(5) This section shall not apply with respect to information or material relating to publicly adjudicated disciplinary and enforcement actions against persons subject to this chapter that is included in a multi-state automated licensing system for access by the public.

**45-8-221. Privileged and confidential information — Disclosures.**

(a) The information that is obtained by the commissioner, or any financial institutions examiner, in making an examination into the affairs of the BIDCO, shall be for the purpose of ascertaining the true condition of the affairs of the BIDCO, shall be privileged and confidential, shall not be subject to subpoena, and shall not be disclosed by the party making the examination to any person, except that the examiner shall report the condition of the affairs of the BIDCO to the commissioner, and except that the commissioner is authorized to make the following disclosures from reports of examinations and any

information related to the examination of the BIDCO:

- (1) Within the department in the course of official duties;
- (2) To the United States department of justice, federal bureau of investigation, Tennessee bureau of investigation or state district attorneys general in the case of any criminal violation discovered during the course of an examination;
- (3) In any administrative proceeding or court action initiated by the commissioner or the department or to which the commissioner is an actual party;
- (4) To the directors of a BIDCO;
- (5) To the comptroller of the treasury or the comptroller's designee for the purpose of an audit of the department; provided, that neither this section nor § 10-7-508 shall allow the comptroller or the comptroller's designee a right of access to the names of debtors or other persons listed in the report of an examination of a BIDCO;
- (6) To the state treasurer, commissioner of finance and administration, and commissioner of economic and community development when disclosure is in the best interest of the state; and
- (7) To other states' financial institutions' regulatory agencies that have authority to regulate BIDCOs in their states.
- (8) [Deleted by 2013 amendment, effective July 1, 2013.]

(b) Disclosures made under subsection (a) shall be made under safeguards designed to prevent further dissemination of confidential information. If any agency or department that has received confidential information under subsection (a) receives a valid subpoena to produce documents of the department of financial institutions, or desires to use the documents in litigation including, but not limited to, discovery proceedings, in which it is involved, the agency or department shall notify the department for permission to produce the documents. The commissioner has the discretion to authorize the requesting agency or department to use the documents under a protective order approved by the commissioner and designed to prevent the unnecessary further dissemination of the documents.

(c)(1) A BIDCO may reproduce all, or any part of, a report of examination and send or deliver the reproduction to a holding company of which it is a subsidiary.

(2) As used in this section, "subsidiary" means:

(A) Any company twenty-five percent (25%) or more of whose voting shares, excluding shares owned by the United States or by any company wholly owned by the United States, is directly or indirectly owned or controlled by the holding company, or is held by it with power to vote;

(B) Any company the election of a majority of whose directors is controlled in any manner by the holding company; or

(C) Any company with respect to the management or policies of which the holding company has the power, directly or indirectly, to exercise a controlling influence, as determined by the commissioner, after notice and opportunity for hearing.

(d) Notwithstanding any provision of this section to the contrary, the commissioner may, in the commissioner's discretion and in the interest of justice, and when under a validly issued subpoena, waive the privilege created herein and produce examination reports of BIDCOs and other related documents under the provisions of a protection order entered by a court or

administrative tribunal of competent jurisdiction where the order is designed to protect the confidential nature of the information so disclosed from public dissemination.

**45-13-201. License required — Exceptions.**

(a) No person shall act as a mortgage lender, mortgage loan broker or mortgage loan servicer in this state without first obtaining a license under this chapter. Except in the case of sale of real property as provided in subsection (b), no contractor or home improvement contractor or other person who supplies materials and renders services in the improvement of real property shall engage in the business of making residential mortgage loans or of being a mortgage loan servicer or mortgage loan broker in this state.

(b)(1) The requirement of a license under subsection (a) and this chapter do not apply to any of the following, except as provided in subdivision (b)(2):

(A) Any depository institution;

(B) Any subsidiary of a depository institution that is owned and controlled by the depository institution and regulated by a federal banking agency;

(C) Any institution regulated by the farm credit administration;

(D) Any individual who makes a residential mortgage loan to, or offers or negotiates terms of a residential mortgage loan with or on behalf of, an immediate family member of the individual;

(E) An individual who makes a residential mortgage loan, or simply offers or negotiates terms of a residential mortgage loan, when the loan is secured by a dwelling that served as the individual's residence;

(F) A licensed attorney performing activities that do not require licensure under the guidelines set forth in 12 CFR part 1008, appendix D;

(G)(i) Any person, or person under the control of another person who, as seller, receives or makes in any consecutive twelve-month period five (5) or fewer residential mortgage loans and who does not hold themselves out to the public as being in the residential mortgage lending business;

(ii) No person shall be exempt from subsection (a) and this chapter pursuant to this subdivision (b)(1)(G) if such person makes more than five (5) residential mortgage loans in a consecutive twelve-month period whether such person makes such loans themselves or through another person over whom such person has control;

(iii) [Deleted by 2013 amendment, effective April 11, 2013.]

(H) [Deleted by 2013 amendment, effective April 11, 2013.]

(I) Any person, or person under the control of a person, who makes a mortgage loan to an employee of such person as an employment benefit, employment incentive, or relocation package;

(J) Any person, or person under the control of a person, doing any act related to mortgage loans pursuant to an order of a court of competent jurisdiction;

(K) A person that performs only real estate brokerage activities, as defined in § 45-13-105, and is licensed pursuant to the Tennessee Real Estate Broker License Act of 1973, compiled in title 62, chapter 13. Such person is permitted to communicate and include in any contract any mortgage terms agreed upon by the parties for the real property being financed without being required to be licensed under this chapter, so long as the communication does not include the offering or negotiating of any

terms of a residential mortgage loan; and

(L) A person that performs land title insurance services in connection with a closing of a sale transaction and is licensed pursuant to the provisions of title 56, chapter 6 and the rules of the Tennessee department of commerce and insurance compiled at chapter 0780-1-56. Such person is permitted to communicate and include in any closing documents any mortgage terms agreed upon by the parties for the real property being financed without being required to be licensed under this chapter, so long as the communication does not include the offering or negotiating of any terms of a residential mortgage loan.

(2) This subsection (b) does not exempt a person from licensure as a mortgage loan originator if the United States department of housing and urban development or its duly designated successor has expressly determined that the person is subject to licensure as a mortgage loan originator as the term is defined in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, compiled in 12 U.S.C. § 5101, et seq.

(c) The requirement of a license to act as a mortgage lender under subsection (a) and the requirements of this chapter pertaining to mortgage lenders, unless otherwise stated, do not apply to any registrant making residential mortgage loans that is authorized to do so under the Industrial Loan and Thrift Companies Act, compiled in chapter 5 of this title; provided, however, that all mortgage loan originators of the registrant must be licensed under part 3 of this chapter.

(d) The commissioner shall be authorized to exempt in whole or in part from the requirements of this chapter additional entities or classes of entities, not including individuals, that the commissioner finds inappropriate to include to effectuate the purposes of this chapter, so long as the exemption is compliant with and does not impede the purposes of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, compiled in 12 U.S.C. § 5101, et seq.

(e) Upon approval or consent by the United States department of housing and urban development, the commissioner shall be authorized to exempt in whole or in part from this chapter additional individuals or classes of individuals, such as those working for bona fide nonprofit corporations and government agencies, that the commissioner finds inappropriate to include to effectuate the purposes of this chapter.

#### **45-15-115. Prohibited actions by lender.**

A title pledge lender shall not:

(1) Accept a pledge from a person less than eighteen (18) years of age, or from anyone who appears to be intoxicated;

(2) Make any agreement giving the title pledge lender any recourse against the pledgor, other than the title pledge lender's right to take possession of the titled personal property and certificate of title upon the pledgor's default or failure to redeem, and to sell or otherwise dispose of the titled personal property, in accordance with the provisions of this chapter;

(3) Enter into a title pledge agreement in which the amount of money loaned, when combined with the outstanding balance of other outstanding title pledge agreements the pledgor has with the same lender secured by any single certificate of title, exceeds two thousand five hundred dollars (\$2,500), or enter into a property pledge agreement in which the amount of money

loaned exceeds two thousand five hundred dollars (\$2,500);

(4) Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor under this chapter;

(5) Fail to exercise reasonable care to protect from loss or damage titled personal property or certificate of title in the physical possession of the title pledge lender;

(6) Purchase pledged titled personal property that was repossessed in the operation of the lender's business;

(7) Maintain more than one (1) title pledge office or place of operation for each title pledge lender under each license; provided, however, that the title pledge lender may move from one (1) place of business to another, as permitted in § 45-15-109(a)(1);

(8) Keep open any title pledge office before eight o'clock a.m. (8:00 a.m.), or after six o'clock p.m. (6:00 p.m.), on any day during the year, with the exception of November 25 through December 24 of each year. During that period, a title pledge lender may open the place of business at eight o'clock a.m. (8:00 a.m.), and shall be entitled to close at nine o'clock p.m. (9:00 p.m.). No title pledge lender shall be open on Sunday. Nothing in this subdivision (8) prohibits a title pledge lender from accepting a payment pursuant to an existing title pledge or property pledge agreement at any time;

(9) Enter into a pledge agreement, unless the pledgor presents a clear title to titled personal property at the time that the loan is made, and the title is retained, after noting of the lien by the state, in the physical possession of the title pledge lender. If the title pledge lender files a lien against the property without possession of a clear title to the property, the resulting lien shall be void;

(10) Capitalize or add any accrued interest or fee to the original principal of the title pledge agreement or property pledge agreement during any renewal of the agreement;

(11) Sell or otherwise charge for any type of insurance in connection with a title pledge agreement or property pledge agreement. Nothing in this subdivision (11) shall prohibit a title pledge lender from offering a pledgor the option to purchase memberships in automobile clubs or associations, as defined in § 55-18-101; provided, that the title pledge lender informs the pledgor in writing that the membership is optional, that the membership can be purchased elsewhere, and that the purchase of the membership has no bearing on whether the pledgor receives a loan;

(12) Charge a prepayment penalty;

(13) Advertise using the words "interest free loans" or "no finance charges," or engage in any other false or misleading advertising;

(14) Require a pledgor to provide any additional guaranty as a condition of entering into a title pledge agreement;

(15) Use any collection tactics in violation of the federal Fair Debt Collection Practices Act, compiled in 15 U.S.C. § 1692, et seq.;

(16) Renew or otherwise consolidate a title pledge agreement or property pledge agreement with the proceeds of another title pledge agreement or property pledge agreement made by the same title pledge lender;

(17) Use any device or agreement, including agreements with affiliated title pledge lenders, with the intent to obtain greater charges than otherwise would be authorized by this chapter; or

(18) Violate the provisions of this chapter or any rule promulgated pursuant to this chapter by the commissioner.

**46-6-101. Establishment.**

(a) The department of veterans' affairs shall provide for Tennessee veterans' cemeteries.

(b) It is the legislative intent that the department, in consultation with the department of finance and administration and other appropriate state departments and agencies, shall, within existing state resources, identify any available state-owned real property and other available financial resources to establish a veterans' cemetery in each of the three (3) grand divisions of the state.

(c) The department of veterans' affairs is authorized to establish additional veterans' cemeteries, as needed, by using state resources in accordance with the planning criteria of the United States department of veterans' affairs (USDVA) and the national cemetery administration (NCA) in order to receive federal grant funding to assist with establishment of additional veterans' cemeteries.

**47-1-103. Construction of chapters 1-9 to promote their purposes and policies — Applicability of supplemental principles of law.**

(a) Chapters 1-9 of this title must be liberally construed and applied to promote its underlying purposes and policies, which are:

- (1) To simplify, clarify, and modernize the law governing commercial transactions;
- (2) To permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and
- (3) To make uniform the law among the various jurisdictions.

(b) Unless displaced by the particular provisions of chapters 1-9 of this title, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause supplement its provisions.

(c) In any dispute as to the proper construction of one (1) or more sections of chapters 1-9 of this title, the Official Comments pertaining to the corresponding sections of the Uniform Commercial Code, Official Text, as adopted by the National Conference of Commissioners on Uniform State Laws and the American Law Institute and as in effect on July 1, 2013, in this state, shall constitute evidence of the purposes and policies underlying such sections, unless:

- (1) The sections of chapters 1-9 of this title that are applicable to the dispute differ materially from the sections of the Official Text that would be applicable thereto; or
- (2) The Official Comments are inconsistent with the plain meaning of the applicable sections of chapters 1-9 of this title.

**47-2A-103. Definitions and index of definitions.**

(1) In this chapter unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling

goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt;

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party;

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole;

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract;

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars (\$25,000);

(f) "Fault" means wrongful act, omission, breach, or default;

(g) "Finance lease" means a lease with respect to which:

- (i) the lessor does not select, manufacture, or supply the goods;
- (ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and
- (iii) one (1) of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of

the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies;

(h) “Goods” means all things that are movable at the time of identification to the lease contract, or are fixtures (§ 47-2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals;

(i) “Installment lease contract” means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause “each delivery is a separate lease” or its equivalent;

(j) “Lease” means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease;

(k) “Lease agreement” means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement;

(l) “Lease contract” means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract;

(m) “Leasehold interest” means the interest of the lessor or the lessee under a lease contract;

(n) “Lessee” means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee;

(o) “Lessee in ordinary course of business” means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. “Leasing” may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a pre-existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt;

(p) “Lessor” means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor;

(q) “Lessor’s residual interest” means the lessor’s interest in the goods after expiration, termination, or cancellation of the lease contract;

(r) “Lien” means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest;

(s) “Lot” means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract;

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease;

(u) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into;

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods;

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease;

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease;

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased; and

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Accessions." § 47-2A-310(1);

"Construction mortgage." § 47-2A-309(1)(d);

"Encumbrance." § 47-2A-309(1)(e);

"Fixtures." § 47-2A-309(1)(a);

"Fixture filing." § 47-2A-309(1)(b); and

"Purchase money lease." § 47-2A-309(1)(c).

(3) The following definitions in other chapters apply to this chapter:

"Account." § 47-9-102(a)(2);

"Between merchants." § 47-2-104(3);

"Buyer." § 47-2-103(1)(a);

"Chattel paper." § 47-9-102(a)(11);

"Consumer goods." § 47-9-102(a)(23);

"Document." § 47-9-102(a)(30);

"Entrusting." § 47-2-403(3);

"General intangible." § 47-9-102(a)(42);

"Good faith." § 47-2-103(1)(b);

"Instrument." § 47-9-102(a)(47);

"Merchant." § 47-2-104(1);

"Mortgage." § 47-9-102(a)(55);

"Pursuant to commitment." § 47-9-102(a)(69);

"Receipt." § 47-2-103(1)(c);

"Sale." § 47-2-106(1);

"Sale on approval." § 47-2-326;

"Sale or return." § 47-2-326; and

"Seller." § 47-2-103(1)(d).

(4) In addition chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

#### **47-4A-108. Relationship to Electronic Fund Transfer Act**

(a) Except as provided in subsection (b), this chapter does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. § 1693 et seq.) as amended from time to time.

(b) This chapter applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act, codified in 15 U.S.C. § 1693o-1, as amended from time to time, unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act, codified in 15 U.S.C. § 1693a, as amended from time to time.

(c) In a funds transfer to which this chapter applies, in the event of an inconsistency between an applicable provision of this chapter and an applicable provision of the Electronic Fund Transfer Act, the provision of the Electronic Fund Transfer Act governs to the extent of the inconsistency.

#### **47-9-102. Definitions and index of definitions.**

(a) **Chapter 9 definitions.** In this chapter:

(1) “Accession” means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) “Account,” except as used in “account for,” means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) “Account debtor” means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) “Accounting,” except as used in “accounting for,” means a record:

(A) Authenticated by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail.

(5) “Agricultural lien” means an interest, other than a security interest, in farm products:

(A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor’s farming

operation; or

(ii) Rent on real property leased by a debtor in connection with its farming operation;

(B) Which is created by statute in favor of a person that:

(i) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) Leased real property to a debtor in connection with the debtor's farming operation; and

(C) Whose effectiveness does not depend on the person's possession of the personal property.

"Agricultural lien" does not include interests or liens created or arising under (i) title 66, chapter 12; (ii) § 66-15-101; (iii) title 66, chapter 20; and (iv) § 43-6-426.

(6) "As-extracted collateral" means:

(A) Oil, gas, or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) Attaches to the minerals as extracted; or

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) To sign; or

(B) With present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subdivision (a)(11), "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the

card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

- (A) Proceeds to which a security interest attaches;
- (B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
- (C) Goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

- (A) The claimant is an organization; or
- (B) The claimant is an individual and the claim:
  - (i) Arose in the course of the claimant's business or profession; and
  - (ii) Does not include damages arising out of personal injury to or the death of an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

- (A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
- (B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

- (A) Is registered as a futures commission merchant under federal commodities law; or
- (B) In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

- (A) To send a written or other tangible record;
- (B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or
- (C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

- (A) The merchant:
  - (i) Deals in goods of that kind under a name other than the name of the person making delivery;
  - (ii) Is not an auctioneer; and
  - (iii) Is not generally known by its creditors to be substantially

engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is one thousand dollars (\$1,000) or more at the time of delivery;

(C) The goods are not consumer goods immediately before delivery; and

(D) The transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) An individual incurs an obligation primarily for personal, family, or household purposes; and

(B) A security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) A consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in § 47-7-201(b).

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines, and bushes; and

- (ii) Aquatic goods produced in aquacultural operations;
- (B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;
- (C) Supplies used or produced in a farming operation; or
- (D) Products of crops or livestock in their unmanufactured states.
- (35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.
- (36) "File number" means the number (or book and page number, if applicable, for a record described in § 47-9-502(b)) assigned to an initial financing statement pursuant to § 47-9-519(a).
- (37) "Filing office" means an office designated in § 47-9-501 as the place to file a financing statement.
- (38) "Filing-office rule" means a rule adopted pursuant to § 47-9-526.
- (39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.
- (40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying § 47-9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.
- (41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.
- (42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.
- (43) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- (44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.
- (45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided or to be provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary endorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, which:

- (A) Are leased by a person as lessor;
- (B) Are held by a person for sale or lease or to be furnished under a contract of service;
- (C) Are furnished by a person under a contract of service; or
- (D) Consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

- (A) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;
- (B) An assignee for benefit of creditors from the time of assignment;
- (C) A trustee in bankruptcy from the date of the filing of the petition; or
- (D) A receiver in equity from the time of appointment.

(53) "Manufactured home" means a structure, transportable in one (1) or more sections, which, in the traveling mode, is eight (8') body feet or more in width or forty (40') body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subdivision (a)(53), except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under title 42 of the United States Code.

(54) "Manufactured-home transaction" means a secured transaction:

- (A) That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or
- (B) In which a manufactured home, other than a manufactured home

held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under § 47-9-203(d) by a security agreement previously entered into by another person.

(57) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor," except as used in § 47-9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under § 47-9-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to," with respect to an individual, means:

- (A) The spouse of the individual;
- (B) A brother, brother-in-law, sister, or sister-in-law of the individual;
- (C) An ancestor or lineal descendant of the individual or the individual's spouse; or

(D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means:

- (A) A person directly or indirectly controlling, controlled by, or under common control with the organization;
- (B) An officer or director of, or a person performing similar functions with respect to, the organization;
- (C) An officer or director of, or a person performing similar functions with respect to, a person described in subdivision (63)(A);
- (D) The spouse of an individual described in subdivision (63)(A), (63)(B), or (63)(C); or

(E) An individual who is related by blood or marriage to an individual described in subdivision (63)(A), (63)(B), (63)(C), or (63)(D) and shares the same home with the individual.

(64) "Proceeds," except as used in § 47-9-609(b), means the following property:

- (A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
- (B) Whatever is collected on, or distributed on account of, collateral;
- (C) Rights arising out of collateral;
- (D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to §§ 47-9-620, 47-9-621, and 47-9-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) Debt securities are issued;

(B) All or a portion of the securities issued have an initial stated maturity of at least twenty (20) years; and

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Public organic record" means a record that is available to the public for inspection and is:

(A) A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;

(B) An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

(C) A record consisting of legislation enacted by the legislature of a state or the congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States which amends or restates the name of the organization.

(69) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(70) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(71) "Registered organization" means an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that

the business trust's organic record be filed with the state.

(72) "Secondary obligor" means an obligor to the extent that:

(A) The obligor's obligation is secondary; or

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(73) "Secured party" means:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) A person that holds an agricultural lien;

(C) A consignor;

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) A trustee, indenture trustee, agent, collateral agent or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) A person that holds a security interest arising under § 47-2-401, § 47-2-505, § 47-2-711(3), § 47-2A-508(5), § 47-4-210, or § 47-5-118.

(74) "Security agreement" means an agreement that creates or provides for a security interest.

(75) "Send," in connection with a record or notification, means:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under subdivision (75)(A).

(76) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(77) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(78) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(79) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(80) "Termination statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(81) "Transmitting utility" means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway, or trolley bus;

(B) Transmitting communications electrically, electromagnetically, or

by light;

(C) Transmitting goods by pipeline or sewer; or

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) **Definitions in other chapters.** “Control” as provided in § 47-7-106 and the following definitions in other chapters apply to this chapter:

“Applicant”	§ 47-5-102
“Beneficiary”	§ 47-5-102
“Broker”	§ 47-8-102
“Certificated security”	§ 47-8-102
“Check”	§ 47-3-104
“Clearing corporation”	§ 47-8-102
“Contract for sale”	§ 47-2-106
“Customer”	§ 47-4-104
“Entitlement holder”	§ 47-8-102
“Financial asset”	§ 47-8-102
“Holder in due course”	§ 47-3-302
“Issuer” (with respect to a letter of credit or letter-of-credit right)	§ 47-5-102
“Issuer” (with respect to a security)	§ 47-8-201
“Issuer” (with respect to a document of title)	§ 47-7-102
“Lease”	§ 47-2A-103
“Lease agreement”	§ 47-2A-103
“Lease contract”	§ 47-2A-103
“Leasehold interest”	§ 47-2A-103
“Lessee”	§ 47-2A-103
“Lessee in ordinary course of business”	§ 47-2A-103
“Lessor”	§ 47-2A-103
“Lessor’s residual interest”	§ 47-2A-103
“Letter of credit”	§ 47-5-102
“Merchant”	§ 47-2-104
“Negotiable instrument”	§ 47-3-104
“Nominated person”	§ 47-5-102
“Note”	§ 47-3-104
“Proceeds of a letter of credit”	§ 47-5-114
“Prove”	§ 47-3-103
“Sale”	§ 47-2-106
“Securities account”	§ 47-8-501
“Securities intermediary”	§ 47-8-102
“Security”	§ 47-8-102
“Security certificate”	§ 47-8-102
“Security entitlement”	§ 47-8-102
“Uncertificated security”	§ 47-8-102

(c) **Chapter 1 definitions and principles.** Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

**47-9-105. Control of electronic chattel paper.**

(a) **General rule: control of electronic chattel paper.** A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(b) **Specific facts giving control.** A system satisfies subsection (a) if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in subdivisions (b)(4), (5), and (6), unalterable;

(2) The authoritative copy identifies the secured party as the assignee of the record or records;

(3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

**47-9-307. Location of debtor**

(a) **“Place of business.”** In this section, “place of business” means a place where a debtor conducts its affairs.

(b) **Debtor’s location: general rules.** Except as otherwise provided in this section, the following rules determine a debtor’s location:

(1) A debtor who is an individual is located at the individual’s principal residence.

(2) A debtor that is an organization and has only one (1) place of business is located at its place of business.

(3) A debtor that is an organization and has more than one (1) place of business is located at its chief executive office.

(c) **Limitation of applicability of subsection (b).** Subsection (b) applies only if a debtor’s residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) **Continuation of location: cessation of existence, etc.** A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) **Location of registered organization organized under state law.** A registered organization that is organized under the law of a state is located in that state.

(f) **Location of registered organization organized under federal law; bank branches and agencies.** Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United

States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) In the state that the law of the United States designates, if the law designates a state of location;

(2) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location, including by designating its main office, home office, or other comparable office; or

(3) In the District of Columbia, if neither subdivision (f)(1) nor (f)(2) applies.

(g) **Continuation of location: change in status of registered organization.** A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(1) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) The dissolution, winding up, or cancellation of the existence of the registered organization.

(h) **Location of United States.** The United States is located in the District of Columbia.

(i) **Location of foreign bank branch or agency if licensed in only one state.** A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one (1) state.

(j) **Location of foreign air carrier.** A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) **Section applies only to this part.** This section applies only for purposes of this part.

#### **47-9-311. Perfection of security interests in property subject to certain statutes, regulations, and treaties.**

(a) **Security interest subject to other law.** Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt § 47-9-310(a);

(2)(A) A certificate-of-title statute of this state, covering automobiles, trailers, mobile homes, vehicles or the like, which provides for a security interest to be indicated on a certificate of title as a condition or result of perfection, under title 55, chapter 3, or

(B) Section 55-3-126(f), which allows temporary perfection; or

(3) A statute of another jurisdiction which provides for a security interest to be indicated on a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) **Compliance with other law.** Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing

statement under this chapter. Except as otherwise provided in subsection (d) and § 47-9-313 and § 47-9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) **Duration and renewal of perfection.** Except as otherwise provided in subsection (d) and § 47-9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this chapter.

(d) **Inapplicability to certain inventory.** During any period in which collateral subject to a statute specified in subdivision (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

#### **47-9-316. Effect of change in governing law.**

(a) **General rule: effect on perfection of change in governing law.** A security interest perfected pursuant to the law of the jurisdiction designated in § 47-9-301(1) or § 47-9-305(c) remains perfected until the earliest of:

- (1) The time perfection would have ceased under the law of that jurisdiction;
- (2) The expiration of four (4) months after a change of the debtor's location to another jurisdiction; or
- (3) The expiration of one (1) year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) **Security interest perfected or unperfected under law of new jurisdiction.** If a security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection (a), it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) **Possessory security interest in collateral moved to new jurisdiction.** A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

- (1) The collateral is located in one (1) jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
- (2) Thereafter the collateral is brought into another jurisdiction; and
- (3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) **Goods covered by certificate of title from this state.** Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unper-

fectured under the law of the other jurisdiction had the goods not become so covered.

(e) **When subsection (d) security interest becomes unperfected against purchasers.** A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under § 47-9-311(b) or § 47-9-313 are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(2) The expiration of four (4) months after the goods had become so covered.

(f) **Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary.** A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or

(2) The expiration of four (4) months after a change of the applicable jurisdiction to another jurisdiction.

(g) **Subsection (f) security interest perfected or unperfected under law of new jurisdiction.** If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection (f), it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(h) **Effect on filed financing statement of change in governing law.** The following rules apply to collateral to which a security interest attaches within four (4) months after the debtor changes its location to another jurisdiction:

(1) A financing statement filed before the change pursuant to the law of the jurisdiction designated in § 47-9-301(1) or § 47-9-305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.

(2) If a security interest perfected by a financing statement that is effective under subdivision (h)(1) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in § 47-9-301(1) or § 47-9-305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(i) **Effect of change in governing law on financing statement filed**

**against original debtor.** If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in § 47-9-301(1) or § 47-9-305(c) and the new debtor is located in another jurisdiction, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four (4) months after, the new debtor becomes bound under § 47-9-203(d), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

(2) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in § 47-9-301(1) or § 47-9-305(c) or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

**47-9-317. Interests that take priority over or take free of security interest or agricultural lien.**

(a) **Conflicting security interests and rights of lien creditors.** A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under § 47-9-322; and

(2) Except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) The security interest or agricultural lien is perfected; or

(B) One (1) of the conditions specified in § 47-9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) **Buyers that receive delivery.** Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) **Lessees that receive delivery.** Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) **Licensees and buyer of certain collateral.** A licensee of a general intangible or a buyer, other than a secured party, of collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) **Purchase-money security interest.** Except as otherwise provided in §§ 47-9-320 and 47-9-321, if a person files a financing statement with respect to a purchase-money security interest before or within thirty (30) days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

**47-9-326. Priority of security interests created by new debtor.**

(a) **Subordination of security interest created by new debtor.** Subject to subsection (b), a security interest that is created by a new debtor in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement that would be ineffective to perfect the security interest but for the application of § 47-9-316(i)(1) or § 47-9-508 is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement.

(b) **Priority under other provisions; multiple original debtors.** The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements described in subsection (a). However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

**47-9-406. Discharge of account debtor — Notification of assignment — Identification and proof of assignment — Restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.**

(a) **Discharge of account debtor; effect of notification.** Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) **When notification ineffective.** Subject to subsection (h), notification is ineffective under subsection (a):

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this chapter; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that assignee is limited.

(c) **Proof of assignment.** Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (e) and §§ 47-2A-303 and 47-9-407, and subject

to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) **Inapplicability of subsection (d) to certain sales.** Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under § 47-9-610 or an acceptance of collateral under § 47-9-620.

(f) **Legal restrictions on assignment generally ineffective.** Except as otherwise provided in §§ 47-2A-303 and 47-9-407 and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) **Subdivision (b)(3) not waivable.** Subject to subsection (h), an account debtor may not waive or vary its option under subdivision (b)(3).

(h) **Rule for individual under other law.** This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable.

(j) **Section prevails over specified inconsistent law.** This section prevails over any inconsistent provisions of an existing or future statute, rule, or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section and states that the provision prevails over this section.

**47-9-408. Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.**

(a) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a

health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) **Applicability of subsection (a) to sales of certain rights to payment.** Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under § 47-9-610 or an acceptance of collateral under § 47-9-620.

(c) **Legal restrictions on assignment generally ineffective.** A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) **Limitation on ineffectiveness under subsections (a) and (c).** To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this chapter but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general

intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) **Section prevails over specified inconsistent law.** This section prevails over any inconsistent provisions of an existing or future statute, rule or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section and states that the provision prevails over this section.

**47-9-502. Contents of financing statement — Record of mortgage as financing statement — Time of filing financing statement.**

(a) **Sufficiency of financing statement.** Subject to subsection (b) a financing statement is sufficient only if it:

(1) Provides the name of the debtor;

(2) Provides the name of the secured party or a representative of the secured party; and

(3) Indicates the collateral covered by the financing statement.

(b) **Real-property-related financing statements.** Except as otherwise provided in § 47-9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

(1) Indicate that it covers this type of collateral;

(2) Indicate that it is to be filed in the real property records;

(3) Provide a description of the real property to which the collateral is related; and

(4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) **Record of mortgage as financing statement.** A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) The record indicates the goods or accounts that it covers;

(2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) The record satisfies the requirements for a financing statement in this section, but:

(A) The record need not indicate that it is to be filed in the real property records; and

(B) The record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom § 47-9-503(a)(4) applies; and

(4) The record is duly recorded.

(d) **Filing before security agreement or attachment.** A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

**47-9-503. Name of debtor and secured party**

(a) **Sufficiency of debtor's name.** A financing statement sufficiently provides the name of the debtor:

(1) Except as otherwise provided in subdivision (a)(3), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend, or restate the registered organization's name;

(2) Subject to subsection (f), if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the collateral is being administered by a personal representative;

(3) If the collateral is held in a trust that is not a registered organization, only if the financing statement:

(A) Provides, as the name of the debtor:

(i) If the organic record of the trust specifies a name for the trust, the name specified; or

(ii) If the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

(B) In a separate part of the financing statement:

(i) If the name is provided in accordance with subdivision (a)(3)(A)(i), indicates that the collateral is held in a trust; or

(ii) If the name is provided in accordance with subdivision (a)(3)(A)(ii), provides additional information sufficient to distinguish the trust from other trusts having one (1) or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

(4) Subject to subsection (g), if the debtor is an individual to whom this state has issued a driver license or a photo identification license (pursuant to § 55-50-336) that has not expired, only if the financing statement provides the name of the individual which is indicated on the driver license or photo identification license;

(5) If the debtor is an individual to whom subdivision (a)(4) does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor; and

(6) In other cases:

(A) If the debtor has a name, only if the financing statement provides the organizational name of the debtor; and

(B) If the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

(b) **Additional debtor-related information.** A financing statement that

provides the name of the debtor in accordance with subsection (a) is not rendered ineffective by the absence of:

- (1) A trade name or other name of the debtor; or
- (2) Unless required under subdivision (a)(6)(B), names of partners, members, associates, or other persons comprising the debtor.
- (c) **Debtor's trade name insufficient.** A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.
- (d) **Representative capacity.** Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.
- (e) **Multiple debtors and secured parties.** A financing statement may provide the name of more than one (1) debtor and the name of more than one (1) secured party.
- (f) **Name of decedent.** The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under subsection (a)(2).
- (g) **Multiple driver licenses or photo identification licenses.** If this state has issued to an individual more than one (1) driver license or photo identification license of a kind described in subdivision (a)(4), the one that was issued most recently is the one to which subdivision (a)(4) refers.
- (h) **Definition.** In this section, the "name of the settlor or testator" means:
  - (1) If the settlor is a registered organization, the name that is stated to be the settlor's name on the public organic record most recently filed with or issued or enacted by the settlor's jurisdiction of organization which purports to state, amend, or restate the settlor's name; or
  - (2) In other cases, the name of the settlor or testator indicated in the trust's organic record.

#### **47-9-507. Effect of certain events of effectiveness of financing statement.**

- (a) **Disposition.** A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.
- (b) **Information becoming seriously misleading.** Except as otherwise provided in subsection (c) and § 47-9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under § 47-9-506.
- (c) **Change in debtor's name.** If the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under § 47-9-503(a) so that the financing statement becomes seriously misleading under § 47-9-506:
  - (1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four (4) months after, the filed financing statement becomes seriously misleading; and
  - (2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four (4) months after the filed

financing statement becomes seriously misleading, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four (4) months after the financing statement became seriously misleading.

**47-9-515. Duration and effectiveness of financing statement; effect of lapsed financing statement.**

(a) **Five-year effectiveness.** Except as otherwise provided in subsections (b), (e), (f) and (g), a filed financing statement is effective for a period of five (5) years after the date of filing.

(b) **Public-finance or manufactured-home transaction.** Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of thirty (30) years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) **Lapse and continuation of financing statement.** The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) **When continuation statement may be filed.** A continuation statement may be filed only within six (6) months before the expiration of the five-year period specified in subsection (a) or the 30-year period specified in subsection (b), whichever is applicable.

(e) **Effect of filing continuation statement.** Except as otherwise provided in § 47-9-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five (5) years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c), unless, before the lapse, another continuation statement is filed pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) **Transmitting utility financing statement.** If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) **Record of mortgage as financing statement.** A record of a mortgage that is effective as a financing statement filed as a fixture filing under § 47-9-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

**47-9-516. What constitutes filing — Effectiveness of filing.**

(a) **What constitutes filing.** Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or

acceptance of the record by the filing office constitutes filing.

(b) **Refusal to accept record; filing does not occur.** Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) The amount that is tendered is not equal to or greater than the sum of the applicable filing fee plus recording tax under § 67-4-409(b), if any, based on the representation of indebtedness required thereunder;

(3) The filing office is unable to index the record because:

(A) In the case of an initial financing statement, the record does not provide a name for the debtor;

(B) In the case of an amendment or information statement, the record:

(i) Does not identify the initial financing statement as required by § 47-9-512 or § 47-9-518, as applicable; or

(ii) Identifies an initial financing statement whose effectiveness has lapsed under § 47-9-515;

(C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's surname; or

(D) In the case of a record filed in the filing office described in § 47-9-501(a)(1), the record does not provide the name of the debtor and a sufficient description of the real property to which it relates;

(4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) Provide a mailing address for the debtor; or

(B) Indicate whether the name provided as the name of the debtor is the name of an individual or an organization;

(6) In the case of an assignment reflected in an initial financing statement under § 47-9-514(a) or an amendment filed under § 47-9-514(b), the record does not provide a name and mailing address for the assignee;

(7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by § 47-9-515(d); or

(8) The record does not contain, either on its face or in an accompanying sworn statement, the language required under § 67-4-409(b)(5)(C) with respect to the recording tax imposed under § 67-4-409(b), if any.

(c) **Rules applicable to subsection (b).** For purposes of subsection (b):

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by § 47-9-512, § 47-9-514, or § 47-9-518, is an initial financing statement.

(d) **Refusal to accept record; record effective as filed record.** A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the

collateral which gives value in reasonable reliance upon the absence of the record from the files.

**47-9-518. Claim concerning inaccurate or wrongfully filed record.**

**(a) Statement with respect to record indexed under person's name.**

A person may file in the filing office an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

**(b) Contents of statement under subsection (a):** An information statement under subsection (a) must:

(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) Indicate that it is an information statement; and

(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

**(c) Statement by secured party of record.** A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under § 47-9-509(d).

**(d) Contents of statement under subsection (c).** An information statement under subsection (c) must:

(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) Indicate that it is an information statement; and

(3) Provide the basis for the person's belief that the person that filed the record was not entitled to do so under § 47-9-509(d).

**(e) Record not affected by information statement.** The filing of an information statement does not affect the effectiveness of an initial financing statement or other filed record.

**47-9-521. Uniform form of written financing statement and amendment.**

**(a) Initial Financing Statement Form.** A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in § 47-9-516(b):

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# **UCC FINANCING STATEMENT**

## **FOLLOW INSTRUCTIONS**

<b>A. NAME &amp; PHONE OF CONTACT AT FILER (optional)</b>
<b>B. E-MAIL CONTACT AT FILER (optional)</b>
<b>C. SEND ACKNOWLEDGMENT TO: (Name and Address)</b>

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**1. DEBTOR'S NAME:** Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of Item 1 blank, check here ☐ and provide the Individual Debtor information in Item 10 of the Financing Statement Addendum (Form UCC1Ad)

<b>1a. ORGANIZATION'S NAME</b>				
<b>OR</b>	<b>1b. INDIVIDUAL'S SURNAME</b>	<b>FIRST PERSONAL NAME</b>	<b>ADDITIONAL NAME(S)/INITIAL(S)</b>	<b>SUFFIX</b>
<b>1c. MAILING ADDRESS</b>	<b>CITY</b>	<b>STATE</b>	<b>POSTAL CODE</b>	<b>COUNTRY</b>

**2. DEBTOR'S NAME:** Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of Item 2 blank, check here ☐ and provide the Individual Debtor information in Item 10 of the Financing Statement Addendum (Form UCC1Ad)

<b>2a. ORGANIZATION'S NAME</b>				
<b>OR</b>	<b>2b. INDIVIDUAL'S SURNAME</b>	<b>FIRST PERSONAL NAME</b>	<b>ADDITIONAL NAME(S)/INITIAL(S)</b>	<b>SUFFIX</b>
<b>2c. MAILING ADDRESS</b>	<b>CITY</b>	<b>STATE</b>	<b>POSTAL CODE</b>	<b>COUNTRY</b>

**3. SECURED PARTY'S NAME (or NAME OF ASSIGNEE or ASSIGNOR SECURED PARTY):** Provide only one Secured Party name (3a or 3b)

<b>3a. ORGANIZATION'S NAME</b>				
<b>OR</b>	<b>3b. INDIVIDUAL'S SURNAME</b>	<b>FIRST PERSONAL NAME</b>	<b>ADDITIONAL NAME(S)/INITIAL(S)</b>	<b>SUFFIX</b>
<b>3c. MAILING ADDRESS</b>	<b>CITY</b>	<b>STATE</b>	<b>POSTAL CODE</b>	<b>COUNTRY</b>

**4. COLLATERAL:** This financing statement covers the following collateral:

<b>5. Check only if applicable and check only one box:</b> Collateral is <input type="checkbox"/> held in a Trust (see UCC1Ad, Item 17 and Instructions) <input type="checkbox"/> being administered by a Decedent's Personal Representative	
<b>6a. Check only if applicable and check only one box:</b> <input type="checkbox"/> Public-Finance Transaction <input type="checkbox"/> Manufactured-House Transaction <input type="checkbox"/> A Debtor is a Transmitting Utility	
<b>6b. Check only if applicable and check only one box:</b> <input type="checkbox"/> Agricultural Lien <input type="checkbox"/> Non-UCC Filing	
<b>7. ALTERNATIVE DESIGNATION (if applicable):</b> <input type="checkbox"/> Lessor/Lessee <input type="checkbox"/> Consignor/Consignee <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailor/Bailor <input type="checkbox"/> Licensor/Licensee	
<b>8. OPTIONAL FILER REFERENCE DATA:</b>	

### UCC FINANCING STATEMENT ADDENDUM

#### FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because individual Debtor name did not fit, check here ☐

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)INITIAL(S)

SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME

OR

10b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)INITIAL(S)

SUFFIX

10c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

11. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)INITIAL(S)

SUFFIX

11c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral):

13. ☐ This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT:

☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in Item 10 (if Debtor does not have a record interest):

16. Description of real estate:

17. MISCELLANEOUS:

UCC FINANCING STATEMENT ADDENDUM (Form UCC1Ad) (Rev. 04/2011)

(b) **Amendment form.** A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in § 47-9-516(b):

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## UCC FINANCING STATEMENT AMENDMENT

### FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)				
B. E-MAIL CONTACT AT FILER (optional)				
C. SEND ACKNOWLEDGMENT TO: (Name and Address)				
THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY				
1a. INITIAL FINANCING STATEMENT FILE NUMBER		1b. <input type="checkbox"/> This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. <b>FILE: attach Amendments Addendum (Form UCC940) and provide Debtor's name in item 1b.</b>		
<input type="checkbox"/> 2. TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement.				
<input type="checkbox"/> 3. ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9. For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8.				
<input type="checkbox"/> 4. CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.				
<input type="checkbox"/> 5. PARTY INFORMATION CHANGE: Check <u>one</u> of these two boxes: <input type="checkbox"/> Debtor or <input type="checkbox"/> Secured Party of record. <b>AND</b> Check <u>one</u> of these three boxes to: <input type="checkbox"/> CHANGE name and/or address: Complete item 6a or 6b; <u>and</u> item 7a or 7b <u>and</u> item 9c. <input type="checkbox"/> ADD name: Complete item 7a or 7b, <u>and</u> item 9c. <input type="checkbox"/> DELETE name: Give record name to be deleted in item 6a or 6b.				
6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only <u>one</u> name (6a or 6b).				
6a. ORGANIZATION'S NAME				
OR				
6b. INDIVIDUAL'S SURNAME		FIRST PERSONAL NAME		ADDITIONAL NAME(S)/INITIAL(S)
6c. SUFFIX				
7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only <u>one</u> name (7a or 7b) (use exact full name; do not omit, modify, or abbreviate any part of the Debtor's name).				
7a. ORGANIZATION'S NAME				
OR				
7b. INDIVIDUAL'S SURNAME				
INDIVIDUAL'S FIRST PERSONAL NAME				
INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)				
6c. SUFFIX				
7c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
				COUNTRY
<input type="checkbox"/> 8. COLLATERAL CHANGE: <b>AND</b> Check <u>one</u> of these four boxes: <input type="checkbox"/> ADD collateral <input type="checkbox"/> DELETE collateral <input type="checkbox"/> RESTATE covered collateral <input type="checkbox"/> ASSIGN collateral. Indicate collateral:				
9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT: Provide only <u>one</u> name (9a or 9b) (name of Assignor, if this is an Assignment). If this is an Amendment authorized by a DEBTOR, check here <input type="checkbox"/> and provide name of authorizing Debtor.				
9a. ORGANIZATION'S NAME				
OR				
9b. INDIVIDUAL'S SURNAME		FIRST PERSONAL NAME		ADDITIONAL NAME(S)/INITIAL(S)
9c. SUFFIX				
10. OPTIONAL FILER REFERENCE DATA:				

**UCC FINANCING STATEMENT AMENDMENT ADDENDUM**

**FOLLOW INSTRUCTIONS**

11. INITIAL FINANCING STATEMENT FILE NUMBER: Same as Item 11 on Amendment form

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT: Same as Item 9 on Amendment form

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S) (INITIAL(S))

SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see instruction Item 13; Provide only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); see instructions if name does not fit)

13a. ORGANIZATION'S NAME

OR

13b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S) (INITIAL(S))

SUFFIX

14. ADDITIONAL SPACE FOR ITEM 13 (Collateral):

15. This FINANCING STATEMENT AMENDMENT:

☐ covers further to be cut ☐ covers as amended collateral ☐ is filed as a future filing

16. Name and address of a RECORD OWNER of real estate described in Item 17  
(If Debtor does not have a record interest):

17. Description of real estate:

18. MISCELLANEOUS:

UCC FINANCING STATEMENT AMENDMENT ADDENDUM (Form UCC3Ad) (Rev. 04/20/11)

**47-9-607. Collection and enforcement by secured party.**

(a) **Collection and enforcement generally.** If so agreed, and in any event after default, a secured party:

(1) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) May take any proceeds to which the secured party is entitled under § 47-9-315;

(3) May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to

make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) If it holds a security interest in a deposit account perfected by control under § 47-9-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) If it holds a security interest in a deposit account perfected by control under § 47-9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) **Nonjudicial enforcement of mortgage.** If necessary to enable a secured party to exercise under subdivision (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) The secured party's sworn affidavit in recordable form stating that:

(A) A default has occurred with respect to the obligation secured by the mortgage; and

(B) The secured party is entitled to enforce the mortgage nonjudicially.

(c) **Commercially reasonable collection and enforcement.** A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) **Expenses of collection and enforcement.** A secured party may deduct from the collections made pursuant to subsection (c) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) **Duties to secured party not affected.** This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

#### **47-9-801. Effective date.**

This act takes effect on July 1, 2013. References in this part to "this act" refer to the public chapter by which this act is added to this title. References in this part to "this chapter as it existed before amendment" or to an "unamended" provision, or other similar references, are to this chapter as in effect June 30, 2013.

#### **47-9-802. Savings clause.**

(a) **Pre-effective-date transactions or liens.** Except as otherwise provided in this part, this act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this act takes effect.

(b) **Pre-effective-date proceedings.** This act does not affect an action, case, or proceeding commenced before this act takes effect.

#### **47-9-803. Security interest perfected before effective date.**

(a) **Continuing perfection; perfection requirements satisfied.** A security interest that is a perfected security interest immediately before this act

takes effect is a perfected security interest under this chapter as amended by this act if, when this act takes effect, the applicable requirements for attachment and perfection under this chapter as amended by this act are satisfied without further action.

(b) **Continuing perfection: perfection requirements not satisfied.** Except as otherwise provided in § 47-9-805, if, immediately before this act takes effect, a security interest is a perfected security interest, but the applicable requirements for perfection under this chapter as amended by this act are not satisfied when this act takes effect, the security interest remains perfected thereafter only if the applicable requirements for perfection under this chapter as amended by this act are satisfied within one (1) year after this act takes effect.

#### **47-9-804. Security interest unperfected before effective date.**

A security interest that is an unperfected security interest immediately before this act takes effect becomes a perfected security interest:

- (1) Without further action, when this act takes effect if the applicable requirements for perfection under this chapter as amended by this act are satisfied before or at that time; or
- (2) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

#### **47-9-805. Effectiveness of action taken before effective date.**

(a) **Pre-effective-date filing effective.** The filing of a financing statement before this act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this chapter as amended by this act.

(b) **When pre-effective-date filing becomes ineffective.** This act does not render ineffective an effective financing statement that, before this act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this chapter as it existed before amendment. However, except as otherwise provided in subsections (c) and (d) and § 47-9-806, the financing statement ceases to be effective:

- (1) If the financing statement is filed in this state, at the time the financing statement would have ceased to be effective had this act not taken effect; or
- (2) If the financing statement is filed in another jurisdiction, at the earlier of:
  - (A) The time the financing statement would have ceased to be effective under the law of that jurisdiction; or
  - (B) June 30, 2018.

(c) **Continuation statement.** The filing of a continuation statement after this act takes effect does not continue the effectiveness of a financing statement filed before this act takes effect. However, upon the timely filing of a continuation statement after this act takes effect and in accordance with the law of the jurisdiction governing perfection as provided in this chapter as amended by this act, the effectiveness of a financing statement filed in the same office in that jurisdiction before this act takes effect continues for the period provided by the law of that jurisdiction.

(d) **Application of subdivision (b)(2)(B) to transmitting utility financing statement.** Subsection (b)(2)(B) applies to a financing statement that, before this act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this chapter as it existed before amendment, only to the extent that this chapter as amended by this act provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(e) **Application of part 5.** A financing statement that includes a financing statement filed before this act takes effect and a continuation statement filed after this act takes effect is effective only to the extent that it satisfies the requirements of Part 5 of this chapter as amended by this act for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of § 47-9-503(a)(2) as amended by this act. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of § 47-9-503(a)(3) as amended by this act.

**47-9-806. When initial financing statement suffices to continue effectiveness of financing statement.**

(a) **Initial financing statement in lieu of continuation statement.** The filing of an initial financing statement in the office specified in § 47-9-501 continues the effectiveness of a financing statement filed before this act takes effect if:

- (1) The filing of an initial financing statement in that office would be effective to perfect a security interest under this chapter as amended by this act;
- (2) The pre-effective-date financing statement was filed in an office in another state; and
- (3) The initial financing statement satisfies subsection (c).

(b) **Period of continued effectiveness.** The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-effective-date financing statement:

- (1) If the initial financing statement is filed before this act takes effect, for the period provided in unamended § 47-9-515 with respect to an initial financing statement; and
- (2) If the initial financing statement is filed after this act takes effect, for the period provided in § 47-9-515 as amended by this act with respect to an initial financing statement.

(c) **Requirements for initial financing statement under subsection (a).** To be effective for purposes of subsection (a), an initial financing statement must:

- (1) Satisfy the requirements of Part 5 of this chapter as amended by this act for an initial financing statement;
- (2) Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement;

and

(3) Indicate that the pre-effective-date financing statement remains effective.

**47-9-807. Amendment of pre-effective-date financing statement.**

(a) **Pre-effective-date financing statement.** In this section, “pre-effective-date financing statement” means a financing statement filed before this act takes effect.

(b) **Applicable law.** After this act takes effect a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in this chapter as amended by this act. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) **Method of amending: general rule.** Except as otherwise provided in subsection (d), if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this act takes effect only if:

(1) The pre-effective-date financing statement and an amendment are filed in the office specified in § 47-9-501;

(2) An amendment is filed in the office specified in § 47-9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies § 47-9-806(c); or

(3) An initial financing statement that provides the information as amended and satisfies § 47-9-806(c) is filed in the office specified in § 47-9-501.

(d) **Method of amending: continuation.** If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under § 47-9-805(c) and (e) or § 47-9-806.

(e) **Method of amending: additional termination rule.** Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after this act takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies § 47-9-806(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in this chapter as amended by this act as the office in which to file a financing statement.

**47-9-808. Persons entitled to file initial financing statement or continuation statement.**

A person may file an initial financing statement or a continuation statement under this part if:

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this part:

(A) To continue the effectiveness of a financing statement filed before this act takes effect; or

(B) To perfect or continue the perfection of a security interest.

**47-9-809. Priority.**

This act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this act takes effect, this chapter as it existed before amendment determines priority.

**47-18-1310. Report to governor and general assembly.**

Each year, on or before September 15, the commissioner shall distribute to the governor and to the chairs of the transportation committee of the house of representatives and the transportation and safety committee of the senate a report entitled, "Annual Report on the Quality of Kerosene and Motor Fuel in Tennessee." The report shall summarize, for the preceding fiscal year, the activities of the department in performing the duties and responsibilities assigned by this part. The report shall identify:

- (1) The total number of inspections performed and samples collected by the department;
- (2) The total number of inspections performed and samples respectively collected from refiners, blenders, storage facilities, transporters, wholesalers, retailers and others;
- (3) The results of inspections and tests conducted, including the number and categories of violations as well as enforcement activities undertaken with respect to such violations;
- (4) The geographical distribution by county of violations;
- (5) The number and categories of consumer complaints, alleging violations of this part, received by the department;
- (6) A summary of investigations conducted in response to consumer complaints;
- (7) The costs of conducting the inspection and testing program;
- (8) Legislative recommendations for improving compliance with this part;
- (9) Other information that would be useful in evaluating the quality of kerosene and motor fuel in Tennessee; and
- (10) Other information that would be useful in evaluating programmatic effectiveness and efficiency.

**47-18-5002. Powers and duties.**

The division of consumer affairs has the power to employ such personnel as may be approved by the commissioners of commerce and insurance and finance and administration, and shall:

- (1) Enforce part 1 of this chapter and this section throughout the state of Tennessee;
- (2) Employ within budgetary limitations the necessary professional, investigative, and clerical staff needed to effectuate part 1 of this chapter and this section;
- (3) Promulgate reasonable procedural rules and regulations needed to carry out part 1 of this chapter and this section. These rules shall be adopted in accordance with the Uniform Administrative Procedure Act, compiled in title 4, chapter 5. Prior to the promulgation of any rule or regulation having the force or effect of law, such rule or regulation must be submitted to the commerce and labor committee of the senate and to the consumer and human resources committee of the house of representatives for their

concurrence. Any rule or regulation which is not acted upon by such committees within thirty (30) days after notice of the filing thereof is given to the chairs of the committees shall become effective notwithstanding subsequent action by the committees;

(4) Conduct investigations and research, hold public hearings, or conduct and publish studies relating to the distribution or furnishing of goods or services to or for the use of consumers when the division or the attorney general and reporter has reason to believe that there are or have been persistent or consistent violations of part 1 of this chapter and this section; provided, that § 47-18-106 shall not be applicable to this subdivision (4);

(5) Serve as the central coordinating agency and clearinghouse for receiving complaints by Tennessee consumers of illegal, fraudulent, deceptive or dangerous practices;

(6) Report annually to the general assembly on the activities of the division. The report shall include, but not be limited to, a statement of the investigatory and enforcement procedures and policies of the division, as well as a statement of the number of complaints filed and of investigations or enforcement proceedings instituted and of their disposition. The report shall not identify any person who has not been otherwise publicly identified in enforcement proceedings unless such person consents to identification. The report may include recommendations for proposed legislation designed to remedy specific unfair or deceptive acts or practices;

(7) Lend assistance to any district attorney general who elects to criminally prosecute any person for any criminal act or practice directed against the consuming public; and

(8) Promote consumer education and inform the public of policies, decisions, and legislation affecting consumers.

#### **47-22-301. Part definitions.**

As used in this part:

(1) "Account purchase transaction" means an agreement under which a commercial entity sells accounts, instruments, documents, or chattel paper to another commercial entity subject to a discount or fee, regardless of whether the commercial entity has a repurchase obligation related to the transaction;

(2) "Acquired" means the obtaining of business records, a credit card account, or an instrument evidencing an outstanding debt through an ownership transfer, including a contractual agreement, an account purchase transaction or assignment in a creditor's regularly conducted business;

(3) "Cardholder" means any person who has agreed with a card issuer to pay debts arising from card transactions, whether the card used in such transactions has been issued to the cardholder or to another person;

(4) "Credit card account" means any account that can be accessed by a credit card, including a debit card with a credit feature, whereby the cardholder may obtain loans from time to time either by credit card cash advance or by the purchase or satisfactions by the bank of obligations of the cardholder incurred pursuant to a credit card;

(5) "Creditor" means the person, business, financial institution or commercial entity that currently owns a credit card account or an instrument evidencing outstanding debt;

(6) "Custodian" means and includes an individual, agent, employee, representative, or officer of a creditor, or an individual, agent, employee, representative, or officer of a management company charged with keeping a creditor's records, or any individual familiar with the books and records of a creditor or an appropriately designated person who is an official custodian of records;

(7) "Electronic records" means that information evidenced by a record or records consisting of information stored electronically which may be produced tangibly;

(8) "Financial institution" means:

(A) A banking institution that is authorized to issue credit cards pursuant to federal or state law;

(B) A banking subsidiary owned by a bank holding company as defined in 12 U.S.C. § 1841, or by a savings and loan holding company as defined in 12 U.S.C. § 1467a(a)(1)(D); or

(C) Any other federally regulated banking institution;

(9) "Incorporated" means to integrate into records, to make a part of records, to place within records, or to treat as records;

(10) "Issuer" means a person, business, financial institution, commercial entity or authorized agent of a financial institution that currently issues a credit card account or an instrument evidencing outstanding debt;

(11) "Original creditor" means the person, business, financial institution or commercial entity that had the original contractual agreement with a cardholder on a credit card account or an instrument evidencing outstanding debt;

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal entity; and

(13) "Succeeding creditor" means any creditor, not the originating creditor, succeeding to an ownership interest in a credit card account or an instrument evidencing outstanding debt by bill of sale or assignment.

**47-22-302. Records that are considered records of regularly conducted activity for evidentiary purposes.**

(a) A creditor's records shall include, but are not limited to, written or electronic records of an original creditor, issuer, or succeeding creditor that have been acquired by the creditor through a contractual agreement, an account purchase transaction or assignment in the creditor's regularly conducted business and such records are:

(1) Incorporated as a business duty into the records of the creditor's regularly maintained records; and

(2) Relied upon in the creditor's regularly conducted business activity.

(b)(1) Except as provided in subdivision (b)(2), records described in subsection (a) shall be considered records of the creditor and the creditor's records custodian may testify with respect to such records as if they are records of the creditor.

(2) Subdivision (b)(1) shall not apply if the source of information or the method or circumstances of preparation indicate the records described in subsection (a) lack trustworthiness.

(c) The records described in this section may be submitted as records of

regularly conducted activity pursuant to Rule 803(6) of the Tennessee Rules of Evidence.

**47-25-503. Application for registration.**

(a) Subject to the limitations set forth in this part, any person who uses a mark may file in the office of the secretary, in a manner complying with the requirements of the secretary, an application for registration of that mark setting forth, but not limited to, the following information:

(1) The name and business address of the person applying for such registration; and, if a corporation, the state of incorporation, or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary;

(2) The goods or services on or in connection with which the mark is used, the mode or manner in which the mark is used on or in connection with such goods or services and the class in which such goods or services fall;

(3) The date when the mark was first used anywhere and the date when it was first used in this state by the applicant or a predecessor in interest; and

(4) A statement that the applicant is the owner of the mark, that the mark is in use, and that, to the knowledge of the person verifying the application, no other person has registered, either federally or in this state, or has the right to use such mark either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive.

(b) The secretary may also require a statement as to whether an application to register the mark, or portions or a composite thereof, has been filed by the applicant or a predecessor in interest in the United States patent and trademark office and, if so, the applicant shall provide full particulars with respect thereto including the filing date and serial number of each application, the status thereof and, if any application was finally refused registration or has otherwise not resulted in a registration, the reasons therefor.

(c) The secretary may also require that a drawing of the mark, complying with such requirements as the secretary may specify, accompany the application.

(d) The application shall be signed and verified (by oath, affirmation or declaration subject to perjury laws) by the applicant or by a member of the firm or an officer of the corporation or association applying.

(e) The application shall be accompanied by one (1) specimen showing the mark as actually used and shall be accompanied by the application fee payable to the secretary.

**47-25-1902. Part definitions.**

As used in this part, unless the context otherwise requires:

(1) "All-terrain vehicle" means a motorized vehicle with no less than four (4) non-highway tires, but no more than six (6) non-highway tires, that is limited in engine displacement to one thousand cubic centimeters (1,000 cc) or less and in total dry weight to less than one thousand five hundred pounds (1,500 lbs.), and is fifty inches (50") or less in width;

(2) "Attachment" means a machine or part of a machine designed to be used on and in conjunction with a motorcycle or off-road vehicle;

(3) "Current model" means a model listed in the supplier's, wholesaler's, manufacturer's or distributor's current sales manual or any supplements to the manual;

(4) "Current net price" means the price listed in the supplier's price list or catalogue in effect at the time the contract is canceled or discontinued, less any applicable trade and cash discounts;

(5) "Dealer" means any person engaged in the business of selling and retailing inventory, who enters into a retail agreement, and who, under the terms of the agreement receives inventory from the supplier. "Dealer" also includes a franchisee who otherwise meets the requirements of a dealer;

(6) "Franchise" or "franchise agreement" means a written or oral agreement for a definite or indefinite period, in which a person grants to another person authority to use a trade name, trademark, service mark or related characteristic within an exclusive territory, or to sell or distribute goods or services, within an exclusive territory, at wholesale, retail, by lease agreement or otherwise; provided, that a franchise is not created by a lease, license or concession granted by a dealer to sell goods or furnish services on or from premises that are occupied by the dealer-grantor primarily for its own merchandising activities;

(7) "Franchisee" means a person to whom a franchise is offered or granted;

(8) "Franchisor" means a person who grants a franchise to another person;

(9) "Inventory" means motorcycles, off-road vehicles, attachments and repair parts;

(10) "Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, including a vehicle that is fully enclosed, has three (3) wheels in contact with the ground, weighs less than one thousand five hundred pounds (1,500 lbs.), and has the capacity to maintain posted highway speed limits, excluding a tractor or motorized bicycle;

(11) "Net cost" means the price the dealer actually paid to the supplier for the inventory, less any applicable trade, volume, or cash bonus discounts, plus freight and set-up expense;

(12) "Off-road vehicle" means any off-road motorcycle, all-terrain vehicle, utility vehicle or dune buggy;

(13) "Person" means a sole proprietor, partnership, corporation, or any other form of business organization;

(14) "Retail agreement" means an agreement, including a franchise agreement that meets the requirements of a retail agreement, whether express, implied, oral, or written, between two (2) or more persons:

(A) By which a person receives the right to:

(i) Sell or lease inventory or services at retail or wholesale; or

(ii) Use a trade name, trademark, service mark, logotype, advertising, or other commercial symbol; and

(B) In which the parties to the agreement have a joint interest, whether equal or unequal, in the offering, selling, or leasing of the inventory or services;

(15) "Superseded part" means any part that will provide the same function as a currently available part as of the date of cancellation;

(16) "Supplier" means a person who enters into a retail agreement and who, under the terms of the agreement, provides inventory or services to a

dealer. "Supplier" includes a:

- (A) Wholesaler;
  - (B) Manufacturer;
  - (C) Franchisor;
  - (D) Person that is a parent corporation or an affiliated corporation of a person identified in this subdivision (16); and
  - (E) A field representative, an officer, an agent, or another direct or indirect representative of a person identified in this subdivision (16); and
- (17) "Terminate" includes the failure to renew.

#### **48-1-103. Exemptions.**

(a) The following securities are exempted from §§ 48-1-104, 48-1-113 and, except as the commissioner may otherwise require by rule or regulation, § 48-1-124(e):

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one (1) or more of the foregoing, or any certificate of deposit for any of the foregoing;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one (1) or more of the foregoing, any international bank of which the United States is a member, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any state; or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment or reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, guardian, or in a similar fiduciary capacity;

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, any federally insured savings and loan or similar association organized under the laws of any state and authorized to do business in this state, or any thrift certificates which are issued and sold by an industrial bank organized and supervised under the laws of this state which is insured pursuant to the Federal Deposit Insurance Act, compiled in 12 U.S.C. § 1811 et seq., as that act may be amended from time to time;

(5) Any security issued or guaranteed by any federal credit union or any credit union supervised under the laws of this state;

(6) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is:

- (A) Subject to the jurisdiction of the interstate commerce commission;
- (B) A registered holding company under the Public Utility Holding Company Act of 1935 [repealed], as amended, or a subsidiary of such a company within the meaning of that act;
- (C) Regulated in respect of its rates and charges by a governmental

authority of the United States or any state; or

(D) Regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(7) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association; provided, that at least ten (10) days prior to any sale of such security such person shall have filed with the commissioner all sales or advertising literature used or proposed to be used in connection with such sale, a notice containing such information as the commissioner may by rule require, and paid a fee of one hundred dollars (\$100); and provided further, that the commissioner may restrict the availability of this exemption to any class or subclass of securities of such issuer;

(8) Any security which meets all of the following conditions:

(A) If the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in this state for service of process and has set forth the name and address of such agent in its prospectus or offering circular;

(B) A class of the issuer's securities is registered under § 12 of the Securities Exchange Act of 1934, codified in 15 U.S.C. § 78l, as amended, and has been so registered for the three (3) years preceding the offering date, and the issuer has filed all reports required to be filed by § 13 or § 15(d) of the Securities Exchange Act of 1934, codified in 15 U.S.C. § 78m and 15 U.S.C. § 78o(d), respectively, as amended, during the preceding twelve (12) months;

(C) Neither the issuer nor a significant subsidiary has had a material default (which was not cured within ten (10) days) during the last five (5) years in the payment of:

(i) Principal, interest, dividend or sinking fund installment on preferred stock or indebtedness for borrowed money; or

(ii) Rentals under material leases with terms of three (3) years or more;

(D) The issuer has had consolidated net income (before extraordinary items and the cumulative effect of accounting changes) of at least one million dollars (\$1,000,000) in four (4) of its last five (5) fiscal years including its last fiscal year and, if the offering is of interest-bearing securities, has had for its last fiscal year, such net income, but before deduction for income taxes and depreciation, of at least one and one-half (1½) times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year" means the most recent year for which audited financial statements are available; provided, that such statements cover a fiscal period ended not more than fifteen (15) months from the commencement of the offering;

(E) If the offering is of stock or shares, other than preferred stock or shares, such securities have voting rights and such rights include:

(i) The right to have at least as many votes per share; and

(ii) The right to vote on at least as many general corporate decisions, as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law;

(F) If the offering is of stock or shares, other than preferred stock or shares, outstanding stock or shares of the same class are owned beneficially or of record, on any date within six (6) months prior to the commencement of the offering, by at least one thousand two hundred (1,200) persons, and on such date there are at least seven hundred fifty thousand (750,000) such shares outstanding with an aggregate market value, based on the closing bid price for that day, of at least three million seven hundred fifty thousand dollars (\$3,750,000). In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith, for the purposes of this subdivision (a)(8), upon written information furnished by the record owners; and

(G) If the offering is of interest-bearing securities of a finance company with liquid assets of at least one hundred five percent (105%) of its liabilities (other than deferred income taxes, deferred investment tax credits, capital stock and surplus) at the end of each of its last five (5) fiscal years, the applicable net income requirement of subdivision (a)(8)(D), but before deduction for interest expense, shall be one hundred twenty-five percent (125%) of the issuer's annual interest expense. "Finance company" means a company engaged, directly or through consolidated subsidiaries, primarily in the business of wholesale, retail, installment, mortgage, commercial, industrial or consumer financing, banking, or factoring. "Liquid assets" means cash receivables payable on demand or not more than twelve (12) years following the close of the company's last fiscal year, and readily marketable securities, in each case less applicable reserves and unearned income;

(9)(A)(i) Any class of securities currently listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, or any other exchange which the commissioner may by order designate unless:

(a) Such class of securities has within the last two (2) years been suspended from trading for failing to meet the then current listing requirements of such exchange;

(b) The commissioner determines by order that the issuer of such class of securities fails to meet the current original listing requirements of such exchange; or

(c) The security fails to meet any rule promulgated under § 48-1-107(e);

(ii) Any other security of the same issuer which is of senior or substantially equal rank;

(iii) Any security called for by subscription rights or warrants so listed or approved; or

(iv) Any warrant or right to purchase or subscribe to any of the foregoing;

(B) The commissioner may by order remove any such exchange from this exemption if upon finding that the current listing requirements or market surveillance of such exchange are such that the continued availability of this exemption for such exchange is not in the public interest and that such removal is necessary for the protection of investors;

(10) Any security exchanged by the issuer exclusively with its existing securities holders where no commission or other remuneration is paid or

given directly or indirectly for soliciting such exchange;

(11) Securities, stocks, and bonds of corporations organized pursuant to the Cooperative Marketing Law, as compiled in title 43, chapter 16, and domiciled within the state of Tennessee; and

(12) Any security issued by a bank holding company or a savings and loan holding company; provided, that:

(A) Such bank holding company is registered with the federal reserve board or such savings and loan holding company is registered with the office of thrift supervision; and

(B) At least ten (10) days prior to any sale of such security in this state, such bank holding company or savings and loan holding company shall have filed with the commissioner all sales or advertising literature used or proposed to be used in this state in connection with such sale, a notice containing such information as the commissioner may by rule require, and paid a fee of one hundred dollars (\$100). The commissioner may restrict the availability of this exemption to any class or subclass of securities of such issuer.

(b) The following transactions are exempted from §§ 48-1-104, 48-1-113 and, except as the commissioner may otherwise require by rule or regulation, § 48-1-124(e):

(1) Any transaction by a person acting as an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(2) Any bona fide pledge transaction;

(3) Any sale to an institutional investor or to a broker-dealer;

(4) Any transaction involving the sale of securities of an issuer by or on behalf of such issuer or an affiliate of such issuer if all of the following conditions are met:

(A) The aggregate number of persons in this state purchasing such securities from the issuer and all affiliates of the issuer pursuant to this subdivision (b)(4) during the twelve-month period ending on the date of such sale shall not exceed fifteen (15) persons, exclusive of persons who acquire such securities in transactions which are not subject to this part or which are otherwise exempt from registration under this section or which have been registered pursuant to § 48-1-105 or § 48-1-106;

(B) Such securities are not offered for sale by means of publicly disseminated advertisements or sales literature; and

(C) All purchasers in this state have purchased such securities with the intent of holding such securities for investment for their own accounts and without the intent of participating directly or indirectly in a distribution of such securities. Any person who holds such securities for a period of two (2) years or more from the date such securities have been fully paid for by such person shall be presumed to have purchased such securities for investment;

(5) Any transaction in the outstanding securities of an issuer by an affiliate of such issuer; provided, that:

(A) Such affiliate is not acting as an underwriter with respect to the sale of such securities;

(B) Such securities are sold by the affiliate, through a broker-dealer registered under § 48-1-109, in "broker's transactions" as defined by Rule 144 of the securities and exchange commission, codified in 17 C.F.R. § 230.144;

(C) There is no solicitation, directly or indirectly, of orders to purchase any of such securities by the issuer or the affiliate; and

(D) Neither the issuer nor the affiliate makes any payments directly or indirectly in connection with the execution of such transactions other than to the broker-dealer who executes the order to sell the securities;

(6) Any offering of securities by or on behalf of an issuer organized under the laws of or domiciled in this state in which the aggregate amount sold in this state does not exceed two hundred fifty thousand dollars (\$250,000) during any twelve-month period, if no commission or other remuneration is paid or given directly or indirectly for soliciting any purchaser in this state, exclusive of any amount of securities sold in exempt transactions pursuant to subdivision (b)(3); provided, that this exemption shall not be available for any offering of certificates of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease;

(7) Any transaction in the outstanding securities of an issuer by or on behalf of a person who is neither the issuer of such securities nor an affiliate of such issuer, at a price reasonably related to the market price and:

(A) If the issuer is required to file reports with the securities and exchange commission pursuant to § 13 or § 15 of the Securities Exchange Act of 1934, codified in 15 U.S.C. §§ 78m and 78o, respectively, as amended, the issuer is not delinquent in the filing of any such reports at the date of sale;

(B) In the case of issuers which are not required to file such reports, if there is publicly available the information concerning the issuer specified in Rule 15c2-11, codified in 17 CFR 240.15c2-11, promulgated under the Securities Exchange Act of 1934, compiled in 15 U.S.C. § 78a et seq.; or

(C) The issuer is an investment company registered under the Investment Company Act of 1940, compiled in 15 U.S.C. § 80a-1 et seq., as amended, and is not delinquent in filing any reports required pursuant to such act;

(8) Any isolated transaction in securities not involving the issuer of such securities, an underwriter of such securities, or an affiliate of the issuer of such securities;

(9) Any transaction involving the issuance of a security:

(A) In connection with a stock bonus plan requiring payment of no consideration other than services;

(B) In connection with a stock bonus, pension, profit sharing, savings, thrift, or retirement plan for employees or self-employed individuals qualified under § 401 of the Internal Revenue Code of 1954, codified in 26 U.S.C. § 401, as amended, or individual retirement accounts qualified under § 408 of the Internal Revenue Code of 1954, codified in 26 U.S.C. § 408, as amended; or

(C) In connection with a transaction that meets the following requirements:

(i) The offering meets the requirements of Rule 701 of the regulations under the Securities Act of 1933, codified in 17 CFR 230.701, as amended;

(ii) The offering is exempt from § 5 of the Securities Act of 1933, codified in 15 U.S.C. § 77e, as amended;

(iii) The issuer files with the commissioner no later than fifteen (15) days after the first sale in this state a notice of transaction, on a form adopted by the commissioner, accompanied by a consent to service of process, and a nonrefundable filing fee of five hundred dollars (\$500); and

(iv) No commission, discount, or other remuneration is paid or given in connection with any transaction in this state under this subsection (b) unless paid or given to a broker-dealer or agent registered under this part;

provided, that the issuance of any such security representing an interest in a collective investment fund shall be exempt only if such security is issued pursuant to a plan established and administered by a bank organized under the laws of the United States or any bank or trust company organized and supervised under the laws of any state of the United States or sponsored by any investment company registered under the Investment Company Act of 1940, compiled in 15 U.S.C. § 80a-1 et seq., as amended, or sponsored by any insurance company licensed to do business in this state;

(10) Any issuance and delivery of securities of a bank holding company, as defined in § 45-2-1402, to a bank or another bank holding company or to the security holders thereof in exchange for all or substantially all of the assets or the voting securities of the bank or other bank holding company, or in connection with a consolidation or merger of the bank holding company and a bank or other bank holding company; provided, that such exchanges, consolidations or mergers are made in accordance with the applicable statutory requirements;

(11) Any transaction which the commissioner by rule or order exempts as not being in the public interest or necessary for the protection of investors. Any rule under this section may require a notice filing, and may require the payment of a filing fee not in excess of that required by § 48-1-107(b). In the event of withdrawal of a notice filing, no funds shall be returned to the applicant;

(12) Any transaction pursuant to an offer to existing security holders of the issuer, including the persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety (90) days of their issuance if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state;

(13) Any offer or sale of units in a unit investment trust registered under the federal Investment Company Act of 1940, compiled in 15 U.S.C. § 80a-1 et seq., as amended, if:

(A) The units have been the subject of a previously effective registration statement under this part and have been sold or were exempt from registration;

(B) The units are offered or sold by a broker-dealer registered under this part; and

(C) The units are sold by or on behalf of a sponsor or depositor of the unit investment trust or an affiliate of the sponsor or depositor;

(14)(A) Any offer or sale of a security by an issuer in a transaction that meets the following requirements:

(i) Sales of securities are made only to persons who are, or who the issuer reasonably believes are, accredited investors. An issuer's belief under this subdivision (b)(14) shall be deemed reasonable if the issuer:

(a) Obtains from such a person a written certification certifying that the person has reviewed the definition of "accredited investor" in § 48-1-102, and certifying that such person meets the definition of "accredited investor" in § 48-1-102;

(b) Obtains from such person such other information as the commissioner may by rule require; and

(c) Maintains, for a period of not less than three (3) years from the date of sale, the written certification and other information required by the commissioner;

(ii) The issuer reasonably believes that all purchasers are purchasing for investment and not with a view to or for resale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within twelve (12) months of sale shall be presumed to be with a view to distribution and not for investment, except a resale to which any of the following applies:

(a) The resale is pursuant to a registration statement effective under § 48-1-105 or § 48-1-106;

(b) The resale is to an accredited investor; or

(c) The resale is to an institutional investor in an exempt transaction pursuant to subdivision (b)(3);

(B) The exemption under this subdivision (b)(14) is not available to an issuer that is in the development stage and that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entities or persons;

(C)(i) The exemption under this subdivision (b)(14) is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliate of the issuer, any of the issuer's directors, officers, general partners, or beneficial owners of ten percent (10%) or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of such underwriter:

(a) Within the past five (5) years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the securities and exchange commission;

(b) Within the past five (5) years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;

(c) Is currently subject to any state or federal administrative enforcement order or judgment, entered within the past five (5) years, finding fraud or deceit in connection with the purchase or sale of any security; or

(d) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the past five (5) years, that temporarily, preliminarily, or permanently restrains or enjoins the party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or

sale of any security.

(ii) Subdivision (b)(14)(C)(i) is inapplicable if any of the following applies:

(a) The party subject to the disqualification is licensed or registered to conduct securities business in the state in which the order, judgment, or decree creating the disqualification was entered against the party described in subdivision (b)(14)(C)(i);

(b) Before the first offer is made under this exemption, the state securities administrator, the court, or regulatory authority that entered that order, judgment, or decree, waives the disqualification; or

(c) The issuer did not know and, in the exercise of reasonable care based on reasonable investigation, could not have known that a disqualification from the exemption existed under subdivision (b)(14)(C)(i);

(D) A general announcement of the proposed offering may be made by any means; provided, the general announcement shall include only the following information, unless additional information is specifically permitted by the commissioner:

(i) The name, address, and telephone number of the issuer of the securities;

(ii) The name, a brief description, and price of any security to be issued;

(iii) A brief description of the business of the issuer;

(iv) The type, number, and aggregate amount of securities being offered;

(v) The name, address, and telephone number of the person to contact for additional information; and

(vi) A statement that:

(a) Sales will be made only to accredited investors;

(b) No money or other consideration is being solicited or will be accepted by way of this general announcement; and

(c) The securities have not been registered with or approved by any state securities administrator or the securities and exchange commission and are being offered and sold pursuant to an exemption from registration;

(E) The issuer, in connection with an offer, may provide information in addition to the general announcement described in subdivision (b)(14)(D); provided, that either of the following applies:

(i) The information is delivered through an electronic database that is restricted to persons who are accredited investors; or

(ii) The information is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor;

(F) No telephone solicitation shall be conducted, unless prior to placing the telephone call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor;

(G) Dissemination of the general announcement described in subdivision (14)(D) to persons who are not accredited investors does not disqualify the issuer from claiming an exemption under this subdivision (b)(14); and

(H) No later than fifteen (15) days after the first sale in this state, the issuer shall file with the commissioner a notice of transaction, on a form

adopted by the commissioner, accompanied by a consent to service of process, a copy of the general announcement, if one is made regarding the proposed offering, and a nonrefundable filing fee of five hundred dollars (\$500);

(15) Any offer or sale of a charitable gift annuity as that term is defined in § 56-52-102;

(16) An offer or sale of a security effected by a Canadian broker-dealer and its agents if, at the time of the offer or sale, the Canadian broker-dealer and its agents have qualified for exemption from registration with the commissioner of commerce and insurance pursuant to § 48-1-109; and

(17) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this part in a security that:

(A) Is rated at the time of the transaction by a nationally recognized statistical rating organization in one (1) of its four (4) highest rating categories; or

(B) Has a fixed maturity or a fixed interest or dividend, if:

(i) A default has not occurred during the current fiscal year or within the three (3) previous fiscal years or during the existence of the issuer and any predecessor if less than three (3) fiscal years, in the payment of principal, interest, or dividends on the security; and

(ii) The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve (12) months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(18) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this part in a security of a foreign issuer:

(A) That is a margin security defined in regulations or rules adopted by the board of governors of the federal reserve system; or

(B) That relates to securities, including american depository receipts (ADRs) representing such securities, that are exempted from § 12(g) of the Securities Exchange Act of 1934, codified in 15 U.S.C. § 78l(g), pursuant to § 12(g)(3), codified in 15 U.S.C. § 78l(g)(3). This subdivision (b)(18)(B) shall apply if the foreign issuer of the securities is in compliance with the conditions of Rule 12g3-2(b), compiled in 17 CFR 240.12g3-2(b), promulgated under the Securities Exchange Act of 1934, compiled in 15 U.S.C. § 78a et seq., and the primary trading market of the foreign issuer:

(i) Qualifies as a primary trading market as that term is defined in Rule 12g3-2(b), note 1 to paragraph (b)(1);

(ii) Maintains listing requirements;

(iii) Has delisting authority; and

(iv) Has disclosure requirements; or

(C) If, at the time of the transaction, the foreign issuer maintains a listing that:

(i) Includes the following:

(a) A description of the business and operations of the foreign issuer;

(b) The names of the executive officers and directors (or their corporate equivalents in the foreign issuer's country of domicile), if

any;

(c) An audited balance sheet of the foreign issuer as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger, either an audited balance sheet of each party to the reorganization or merger or a pro forma balance sheet of the combined organization, in each case as of a date within eighteen (18) months before the date of the transaction; and

(d) An audited income statement for each of the foreign issuer's immediately preceding two (2) fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger either an audited income statement of each party to the reorganization or merger or a pro forma income statement of the combined organization, in each case as of a date within eighteen (18) months before the date of the transaction; and

(ii) Is published in:

(a) Standard & Poor's Standard Corporation Records, including electronic formats of the publication on CD-ROM and the Internet;

(b) Any other nationally recognized securities manual that meets or exceeds the standards of Standard & Poor's Standard Corporation Records; or

(c) A securities manual designated by the commissioner through rule promulgated in accordance with § 48-1-116;

(19) A nonissuer transaction by an investment adviser registered pursuant to § 203 of the federal Investment Advisers Act of 1940, codified in 15 U.S.C. § 80b-3, with investments under management in excess of one hundred million dollars (\$100,000,000) acting in the exercise of discretionary authority in a signed record for the account of others; and

(20) Any non-issuer transaction by or through a broker-dealer, registered or exempt from registration under this chapter, effecting an unsolicited order or offer to purchase; provided, that the broker-dealer acts solely as an agent for the purchaser, has no direct or indirect interest in the sale or distribution of the security ordered, and receives no commission, profit, or other compensation from any source other than the purchaser; and provided further, that the commissioner may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period.

#### **48-11-201. Definitions for chapters 11 through 27.**

As used in chapters 11-27 of this title, unless the context otherwise requires (or the term is otherwise defined in another chapter of the Tennessee Business Corporation Act, in which event the term shall have such other meaning for that chapter):

(1) "Affiliate" of a specific person means a person that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the person specified;

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue;

(3) "Business" means any activity or function;

(4) "Charter" includes amended and restated charters and articles of

merger;

(5) "Confirmation of good standing" means confirmation by the commissioner of revenue issued through electronic communication to the secretary of state or a certificate of tax clearance that at the time such confirmation is issued a domestic or foreign corporation is current on all taxes and penalties to the satisfaction of the commissioner;

(6) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous;

(7) "Corporation," "domestic corporation" or "domestic business corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to chapters 11-27 of this title;

(8) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and, if authorized in accordance with § 48-11-202, by electronic transmission;

(9) "Distribution" means a direct or indirect transfer of money or other property (except its own shares) or incurrence of indebtedness (whether directly or indirectly, including through a guaranty) by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness (which includes the incurrence of indebtedness for the benefit of the shareholders); or otherwise;

(10) "Document" means:

(A) Any tangible medium on which information is inscribed, and includes any writing or written instrument; or

(B) An electronic record;

(11) "Effective date of notice," as defined in § 48-11-202(i);

(12) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(13) "Electronic record" means information that is stored in an electronic or other medium and is retrievable in paper form through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with § 48-11-202;

(14) "Electronic transmission" or "electronically transmitted" means any form or process of communication not directly involving the physical transfer of paper or another tangible medium, which is:

(A) Suitable for the retention, retrieval, and reproduction of information by the recipient; and

(B) Is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with § 48-11-202(j);

(15) "Emergency" exists when a quorum of the corporate directors cannot readily be assembled because of some catastrophic event;

(16) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee;

(17) "Entity" includes domestic and foreign business corporation; domestic and foreign nonprofit corporation; estate; trust; domestic and foreign unincorporated entity and state, United States, and foreign government. The term includes two (2) or more persons having a joint or common

economic interest;

(18) "Filing entity" means an unincorporated entity that is of a type that is created by filing a public organic document;

(19) "Foreign corporation" means a corporation for profit incorporated under a law other than the laws of this state;

(20) "Foreign nonprofit corporation" means a corporation incorporated under a law other than the law of this state, which would be a nonprofit corporation if incorporated under the laws of this state;

(21) "Foreign unincorporated entity" means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than this state;

(22) "Governmental subdivision" includes authority, county, district, and municipality;

(23) "Includes" denotes a partial definition;

(24) "Individual" includes the estate of an incompetent or deceased individual;

(25) "Interest" means either or both of the following rights under the organic law of an unincorporated entity:

(A) The right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(B) The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs;

(26) "Means" denotes an exhaustive definition;

(27) "Month" means the time from any day of any month to the corresponding day of the succeeding month, if any, and if none, the last day of the succeeding month. "A period of two (2) or more months" means the time from any day of the first month in such period to the corresponding day of the last month in such period, if any, and if none, the last day of the last month in such period;

(28) "Nonfiling entity" means an unincorporated entity that is of a type that is not created by filing a public organic document;

(29) "Nonprofit corporation" or "domestic nonprofit corporation" means a corporation incorporated under the laws of this state and subject to the Tennessee Nonprofit Corporation Act, compiled in chapters 51-68 of this title;

(30) "Notice," as defined in § 48-11-202;

(31) "Organic document" means a public organic document or a private organic document;

(32) "Organic law" means the statute governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity;

(33) "Person" includes individual and entity;

(34) "Principal office" means the office (in or out of this state) so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located;

(35) "Private organic document" means any document (other than the public organic document, if any) that determines the internal governance of an unincorporated entity. Where a private organic document has been amended or restated, the term means the private organic document as last amended or restated;

(36) "Proceeding" includes civil suit and criminal, administrative, and investigatory action;

(37) "Public organic document" means the document, if any, that is filed of public record to create an unincorporated entity. Where a public organic document has been amended or restated, the term means the public organic document as last amended or restated;

(38) "Record date" means the date established under chapter 16 or 17 on which a corporation determines the identity of its shareholders for purposes of chapters 11-27 of this title;

(39) "Secretary" means the corporate officer to whom the bylaws or the board of directors has delegated responsibility under § 48-18-401(c) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation;

(40) "Share" means the unit into which the proprietary interests in a corporation are divided;

(41) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation;

(42) "Sign" or "signature" means, with present intent to authenticate or adopt a document:

(A) To execute or adopt a tangible symbol to a document, and includes any manual, facsimile, or conformed signature; or

(B) To attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature in an electronic transmission;

(43) "State," when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory and insular possession (and their agencies and governmental subdivisions) of the United States;

(44) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation;

(45) "Subsidiary" means a corporation more than fifty percent (50%) of whose outstanding voting shares are owned by its parent and/or the parent's other wholly-owned subsidiaries;

(46) "Tax clearance for termination or withdrawal" means confirmation by the commissioner of revenue issued through electronic communication to the secretary of state or a certificate of tax clearance that a domestic or foreign corporation has filed all applicable reports, including, but not limited to, a final report, and has paid all fees, penalties and taxes as required by the revenue laws of this state;

(47) "Unincorporated entity" means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following: a domestic or foreign business or nonprofit corporation, an estate, a trust, a state, the United States, or a foreign government. The term includes a general partnership, limited liability company, limited partnership, business trust, joint stock association, and unincorporated nonprofit association;

(48) "United States" includes district, authority, bureau, commission, department, and any other agency of the United States;

(49) "Voting group" means all shares of one (1) or more classes or series that under the charter or chapters 11-27 of this title are entitled to vote and

be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the charter or chapters 11-27 of this title to vote generally on the matter are for that purpose a single voting group; and

(50) "Writing" or "written" means any information in the form of a document.

#### **48-11-202. General notice requirements.**

(a) Notice under chapters 11-27 of this title must be in writing unless oral notice is reasonable in the circumstances and not prohibited by the charter or bylaws. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication under chapters 11-27 of this title must be in English.

(b) A notice or other communication may be given or sent by any method of delivery, except that electronic transmissions must be in accordance with this section. If these methods of delivery are impracticable, a notice or other communication may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication.

(c) Notice or other communication to a domestic or foreign corporation (authorized to transact business in this state) may be delivered to its registered agent at its registered office (or to a designated mailing address such as a post office box if the United States postal service does not deliver to the registered agent's registered office) or to the secretary of the corporation at its principal office shown in its most recent annual report (or to a designated mailing address such as a post office box if the United States postal service does not deliver to the corporation's principal office) or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(d) Notice or other communications may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection (j).

(e)(1) Any consent under subsection (d) may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. Any such consent is deemed revoked if:

(A) The corporation is unable to deliver two (2) consecutive electronic transmissions given by the corporation in accordance with such consent; and

(B) Such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice or other communication.

(2) The inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(f) Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

(1) It enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission; and

(2) It is in a form capable of being processed by that system.

(g) Receipt of an electronic acknowledgement from an information processing system described in subdivision (f)(1) establishes that an electronic transmission was received but, by itself, does not establish that the content

sent corresponds to the content received.

(h) An electronic transmission is received under this section even if no individual is aware of its receipt.

(i) Notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

(1) If in a physical form, the earliest of when it is actually received, or when it is left at:

(A) A shareholder's address shown on the corporation's record of shareholders maintained by the corporation under § 48-26-101(c);

(B) A director's residence or usual place of business; or

(C) The corporation's principal place of business;

(2) If mailed first class postage prepaid and correctly addressed to a shareholder, upon deposit in the United States mail;

(3) If mailed by United States mail postage prepaid and correctly addressed to a recipient other than a shareholder, the earliest of when it is actually received, or:

(A) If sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee; or

(B) Five (5) days after it is deposited in the United States mail;

(4) If an electronic transmission, when it is received as provided in subsection (f); or

(5) If oral, when communicated, if communicated in a comprehensible manner.

(j) A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if:

(1) The electronic transmission is otherwise retrievable in perceivable form; and

(2) The sender and the recipient have consented in writing to the use of such form of electronic transmission.

(k) If chapters 11-27 of this title prescribe requirements for notices or other communications in particular circumstances, those requirements govern. If the charter or bylaws prescribe requirements for notices or other communications, not inconsistent with this section or other provisions of chapters 11-27 of this title, those requirements govern. The charter or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

#### **48-11-301. Filing requirements.**

(a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.

(b) Chapters 11-27 of this title must require or permit filing the document in the office of the secretary of state.

(c) The document must contain the information required by chapters 11-27 of this title. It may contain other information as well.

(d) The document must be typewritten or printed in ink in a clear and legible fashion on one (1) side of letter size paper.

(e) The document must be in the English language. A corporate name need

not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be executed:

(1) By the chair of the board of directors of a domestic or foreign corporation, by its president, or by another of its authorized officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary.

(g) The person executing the document shall sign it and state beneath or opposite such person's signature such person's name and the capacity in which such person signs. The document may but need not contain:

(1) The corporate seal;

(2) An attestation by the secretary or an assistant secretary;

(3) An acknowledgement, verification or proof; or

(4) The date the document is signed, except that such date shall be required for the annual report for the secretary of state.

(h) If the secretary of state has prescribed a mandatory form for the document under § 48-11-302, the document must be in or on the prescribed form.

(i) The document must be delivered to the office of the secretary of state for filing and must be accompanied by the correct filing fee, and any corporate tax, license fee, interest or penalty required by chapters 11-27 of this title.

(j) Whenever this title permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following apply:

(1) The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document;

(2) The facts may include, but are not limited to:

(A) Any of the following that is available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;

(B) A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

(C) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document;

(3) As used in this subsection (j):

(A) "Filed document" means a document filed with the secretary of state under any provision of chapters 11-27 of this title, except chapter 25 or § 48-26-203; and

(B) "Plan" means a plan of domestication, nonprofit conversion, entity conversion, merger, or share exchange;

(4) None of the following provisions of a plan or filed document shall be made dependent on facts outside the plan or filed document:

(A) The name and address of any person required in a filed document;

(B) The registered office of any entity required in a filed document;

(C) The registered agent of any entity required in a filed document;

(D) The number of authorized shares and designation of each class or

series of shares;

(E) The effective date of a filed document;

(F) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given; and

(5) If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in subdivision (j)(2)(A) or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the secretary of state articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this subdivision (j)(5) are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

(k) The secretary of state has the power to promulgate appropriate rules and regulations establishing acceptable methods for execution of any document to be filed with the secretary of state.

(l) All documents submitted to the secretary of state for filing should contain a statement which makes it clear that they are being filed pursuant to the Tennessee Business Corporation Act, compiled in chapters 11-27 of this title.

(m) The secretary of state has the power to establish procedures for the filing of documents with the secretary of state by means of electronic transmission.

(n) Notwithstanding any other law to the contrary, whenever this title requires that an application or other document submitted to the secretary of state for filing be accompanied by a confirmation of good standing, tax clearance for termination or withdrawal, or other similar communication of taxpayer status by the commissioner of revenue, then such requirement shall be met, and a paper certificate need not accompany the application or other document, if the commissioner provides to the secretary of state electronic verification of the required information. Upon request of the person seeking certificate information, the commissioner shall provide to the secretary of state electronic verification in lieu of a paper certificate.

#### **48-11-302. Forms.**

(a)(1) The secretary of state may prescribe and furnish on request forms for:

(A) An application for a certificate of existence;

(B) A foreign corporation's application for a certificate of authority to transact business in this state;

(C) A foreign corporation's application for a certificate of withdrawal; and

(D) The annual report.

(2) If the secretary of state so requires, use of these forms is mandatory.

(b) The secretary of state may prescribe and shall furnish on request forms for other documents required or permitted to be filed by chapters 11-27 of this title. If the secretary of state has prescribed a mandatory form for the document, the document must be in or on the prescribed form or a conformed copy thereof.

**48-11-303. Filing, service, and copying fees.**

(a) The secretary of state shall collect the following fees when the documents described in this subsection (a) are delivered to the secretary of state for filing:

<u>Document</u>	<u>Fee</u>
(1) Charter (including designation of initial registered office and agent) .....	\$100.00
(2) Application for use of indistinguishable name .....	20.00
(3) Application for reserved name .....	20.00
(4) Notice of transfer or cancellation of reserved name .....	20.00
(5) Application for registered name .....	20.00
(6) Application for renewal for registered name .....	20.00
(7) Application for or change, cancellation, or renewal of assumed name .....	20.00
(8) Corporation's statement of change of registered agent or registered office, or both .....	20.00
(9) Agent's statement of change of registered office .....	5.00
	per corporation, but not less than 20.00
(10) Agent's statement of resignation .....	20.00
(11) Charter amendment .....	20.00
(12) Restatement of charter .....	20.00
(13) Amended and restated charter .....	20.00
(14) Articles of entity conversion .....	100.00
(15) Articles of charter surrender .....	20.00
(16) Statement of abandonment of merger, conversion or share exchange .....	20.00
(17) Articles of merger or share exchange .....	100.00
(18) Articles of dissolution and termination by incorporators or directors .....	20.00
(19) Articles of dissolution .....	20.00
(20) Articles of revocation of dissolution .....	20.00
(21) Articles of termination of corporate existence .....	20.00
(22) Certificate of administrative dissolution .....	No fee
(23) Application for reinstatement following administrative dissolution .....	70.00
(24) Articles of termination following administrative dissolution or revocation .....	100.00
(25) Certificate of reinstatement .....	No fee
(26) Certificate of judicial dissolution .....	No fee
(27) Application for certificate of authority (including designation of initial registered office and agent) .....	600.00
(28) Application for amended certificate of authority .....	20.00
(29) Application for certificate of withdrawal .....	20.00

	<u>Document</u>	<u>Fee</u>
(30)	Certificate of revocation of authority to transact business .....	No Fee
(31)	Application for certificate of withdrawal following administrative revocation .....	100.00
(32)	Application for reinstatement following administrative revocation .....	70.00
(33)	Annual report .....	20.00
(34)	Articles of correction .....	20.00
(35)	Application for certificate of existence or authorization ...	20.00
(36)	Any other document required or permitted to be filed by chapters 11-27 of this title .....	20.00

(b) The secretary of state shall collect a fee of twenty dollars (\$20.00) each time process is served on the secretary of state under chapters 11-27 of this title. The party to a proceeding causing service of process is entitled to recover this fee as costs if such party prevails in the proceeding.

(c) The secretary of state shall collect a fee of twenty dollars (\$20.00) for copying all filed documents relating to a domestic or foreign corporation. All such copies will be certified or validated by the secretary of state.

(d) In addition to the other filing requirements of chapters 11-27 of this title, a copy of all documents specified in subdivisions (a)(1) and (11)-(20) shall also be filed in the office of the register of deeds in the county wherein a corporation has its principal office, if such principal office is in Tennessee, and in the case of a merger, in the county in which the new or surviving corporation shall have its principal office if such principal office is in Tennessee. The register of deeds may charge five dollars (\$5.00) plus fifty cents (50¢) per page in excess of five (5) pages for such filing.

#### **48-11-304. Effective time and date of document.**

(a) Except as provided in subsection (b) and § 48-11-305(c), a document accepted for filing is effective:

(1) At the time of filing on the date it is filed by the secretary of state, as evidenced by the secretary of state's date and time endorsement on the original document; and

(2) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but not time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed by the secretary of state. Notwithstanding the foregoing, documents specified in § 48-11-303(a)(3)-(7), (15), (16), (20), (21), (25), (31), (33) and (34) may not specify a delayed effective time and date.

(c) The secretary of state shall not file any charter or application for a certificate of authority unless that document designates the registered agent and registered office of such domestic or foreign corporation in accordance with chapters 15 and 25 of this title. The secretary of state shall not file any other document under chapters 11-27 of this title if at the time of filing the domestic or foreign corporation does not have a registered agent or registered office

designated at such time, unless at the time such document is received for filing the secretary of state also receives for filing a statement designating such registered agent or registered office, or both.

**48-11-306. Filing duty of secretary of state.**

(a) If a document delivered to the office of the secretary of state for filing satisfies the requirements of § 48-11-301, the secretary of state shall file it.

(b) The secretary of state files a document by stamping or otherwise endorsing "Filed," together with the secretary of state's name and official title and the date and time of receipt, on such document. After filing a document, except for filings pursuant to §§ 48-15-103, 48-25-109 and 48-26-203, the secretary of state shall deliver the document, with the filing fee receipt (or acknowledgment of receipt if no fee is required) attached, to the domestic or foreign corporation or its representative in due course. A domestic or foreign corporation or its representative may present to the secretary of state an exact or conformed copy of the document presented for filing together with such document, and, in that event, the secretary of state shall stamp or otherwise endorse the exact or conformed copy filed, together with the secretary of state's name and official title and the date and time of receipt, and immediately return the exact or conformed copy to the party filing the original of such document.

(c) If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative within a reasonable time after the document was received for filing, together with a brief, written explanation of the reason for the secretary of state's refusal.

(d) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not:

- (1) Affect the validity or invalidity of the document in whole or part;
- (2) Relate to the correctness or incorrectness of information contained in the document;
- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect; or
- (4) Establish that a document purporting to be an exact or conformed copy is in fact an exact or conformed copy.

(e) Any corporate document which meets the requirements of chapters 11-27 of this title for filing and recording shall be received, filed and recorded by the appropriate office, notwithstanding any contrary requirements found in any other provision of the laws of this state.

**48-11-308. Evidentiary effect of copy of filed document.**

A certificate attached or certification affixed to a copy of a document filed by the secretary of state, bearing the secretary of state's signature (which may be in facsimile or other electronic format) and the seal of this state, is conclusive evidence that the original document is on file with the secretary of state.

**48-12-102. Charter.**

- (a) The charter must set forth:
  - (1) A corporate name for the corporation that satisfies the requirements of

§ 48-14-101;

(2) The number of shares the corporation is authorized to issue;

(3) The street address and zip code of the corporation's initial registered office (or a mailing address such as a post office box if the United States postal service does not deliver to the registered agent's registered office), the county in which the office is located, and the name of its initial registered agent at that office;

(4) The name and address and zip code of each incorporator;

(5) The street address and zip code of the initial principal office of the corporation (or a mailing address such as a post office box if the United States postal service does not deliver to the principal office);

(6) Information required by chapter 16 of this title; and

(7) A statement that the corporation is for profit.

(b) The charter may set forth:

(1) The names and addresses of the individuals who are to serve as the initial directors;

(2) Provisions not inconsistent with law:

(A) Stating the purpose or purposes for which the corporation is organized;

(B) Regarding the management of the business and regulating the affairs of the corporation; or

(C) Defining, limiting and regulating the powers and rights of the corporation, its board of directors and shareholders;

(3)(A) A provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director; provided, that such provision shall not eliminate or limit the liability of a director:

(i) For any breach of the director's duty of loyalty to the corporation or its shareholders;

(ii) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

(iii) Under § 48-18-302.

(B) No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provisions become effective. All references in this subdivision (b)(3) to a "director" are also deemed to refer to a member of the governing body of a corporation which dispenses with or limits the authority of the board of directors pursuant to § 48-18-101(c); and

(4) Any provision that under chapters 11-27 of this title is required or permitted to be set forth in the bylaws.

(c) The charter need not set forth any of the corporate powers enumerated in chapters 11-27 of this title.

#### **48-12-107. Emergency bylaws.**

(a) Unless the charter provides otherwise, the board of directors or the incorporators of a corporation may adopt bylaws to be effective only in an emergency. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

(1) Procedures for calling a meeting of the board of directors;

- (2) Quorum requirements for the meeting; and
- (3) Designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:

- (1) Binds the corporation; and
- (2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

#### **48-15-102. Change of registered office or registered agent.**

(a) A corporation may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

- (1) The name of the corporation;
- (2) If the current registered office is to be changed, the street address of the new registered office and the zip code for such office (or a mailing address such as a post office box if the United States postal service does not deliver to the registered agent's registered office), and the county in which the office is located;
- (3) If the current registered agent is to be changed, the name of the new registered agent; and
- (4) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of such registered agent's business office, such registered agent may change the street address of the registered office of any corporation for which such registered agent is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

#### **48-15-105. Procedure for service on domestic or foreign corporation by service on secretary of state.**

(a) Service on the secretary of state, when the secretary of state is an agent for a domestic or foreign corporation as provided in § 48-15-104(b), of any process, notice, or demand shall be made by delivering to the secretary of state the original and one (1) copy of such process, notice, or demand, duly certified by the clerk of the court in which the suit or action is pending or brought, together with the proper fee. A statement which identifies which of the grounds, as listed in § 48-15-104(b), for service on the secretary of state is applicable, must be included. The secretary of state shall endorse the time of receipt upon the original and copy and immediately shall send the copy, along with a written notice that service of the original was also made, by registered or certified mail, with return receipt requested, addressed to such corporation

at its registered office (or designated alternative mailing address) or principal office (or designated alternative mailing address) as shown in the records on file in the secretary of state's office or as shown in the official registry of the state or country in which such corporation is incorporated. If none of the previously mentioned addresses are available to the secretary of state, service may be made on any one (1) of the incorporators at the address set forth in the charter. The secretary of state may require the plaintiff (or complainant as the case may be) or the plaintiff's (or complainant's) attorney to furnish the latter address.

(b) The refusal or failure of such corporation to accept delivery of the registered or certified mail provided for in subsection (a), or the refusal or failure to sign the return receipt, shall not affect the validity of such service; and any such corporation refusing or failing to accept delivery of such registered or certified mail shall be charged with knowledge of the contents of any process, notice, or demand contained therein.

(c) When the registered or certified mail return receipt is received by the secretary of state or when a corporation refuses or fails to accept delivery of the registered or certified mail and it is returned to the secretary of state, the secretary of state shall forward the receipt or such refused or undelivered mail to the clerk of the court in which the suit or action is pending, together with the original process, notice, or demand, a copy of the notice the secretary of state sent to the defendant corporation and the secretary of state's affidavit setting forth the secretary of state's compliance with this section. Upon receipt thereof, the clerk shall copy the affidavit on the rule docket of the court and shall mark it, the receipt or refused or undelivered mail, and the copy of notice as of the day received and place them in the file of the suit or action where the process and pleadings are kept, and such receipt or refused or undelivered mail, affidavit, and copy of notice shall be and become a part of the technical record in the suit or action and thereupon service on the defendant shall be complete. Service made under this section shall have the same legal force and validity as if the service had been made personally in this state.

(d) Subsequent pleadings or papers permitted or required to be served on such defendant domestic or foreign corporation may be served on the secretary of state as agent for such defendant corporation in the same manner, at the same cost and with the same effect as process, notice, or demand are served on the secretary of state as agent for such defendant corporation under this section.

(e) No appearance shall be required in the suit or action by the defendant domestic or foreign corporation nor shall any judgment be taken against the defendant domestic or foreign corporation in less than one (1) month after the date service is completed under this section.

(f) The secretary of state shall keep a record of all processes, notices, and demands served upon the secretary of state under this section, which record shall include the time of such service and the secretary of state's action with reference thereto.

#### **48-16-205. Options to subscribe for or purchase shares — Instruments evidencing options — Authority to grant.**

(a) Unless the charter otherwise provides, a corporation, by its directors, may grant rights, options or warrants to subscribe for or to purchase shares of

any authorized class, at the times and on the terms that are set forth in such rights, options or warrants, or in the contracts, warrants or instruments that evidence such rights, options or warrants, which contracts, warrants or instruments may be transferable or nontransferable and may be separable or inseparable from such rights, options or warrants upon the following conditions:

(1) If the shares are subject to preemptive rights and if the rights, options or warrants are not granted to shareholders in satisfaction of their preemptive rights, the granting of the rights, options or warrants must be authorized by the vote or consent of the shareholders or holders of shares of particular classes that then would be required to waive or release such preemptive rights; the vote or consent shall release the preemptive rights to the shares required to satisfy the rights, options or warrants if and when exercised; and

(2) If at the time of granting the rights, options or warrants the corporation does not have authorized and unissued shares sufficient to satisfy the rights, options or warrants if and when exercised, the granting of the rights, options or warrants must be authorized by the vote of the shareholders or holders of shares of particular classes that then would be required to adopt an amendment to the charter for the purpose of increasing the authorized number of such shares, and the shares required to be issued upon the exercise of the rights, options or warrants shall be provided by an amendment concurrently or thereafter adopted by the shareholders or the directors.

(b)(1) The securities, contracts, warrants or instruments that evidence the rights, options or warrants may contain any terms not repugnant to law, including, but not limited to, the following:

(A) Restrictions upon the authorization or issuance of additional shares;

(B) Provisions for the adjustment of the exercise price;

(C) Provisions concerning rights in the event of reorganization, merger, share exchange or sale of the entire assets of the corporation;

(D) Provisions for the reservation of authorized but unissued shares to satisfy the rights, options or warrants;

(E) Restrictions upon the declaration of payment of dividends or distributions; or

(F) Conditions on the exercise of the rights, options or warrants, including, subject to the limitation specified in subdivision (b)(2), conditions that preclude a holder, including, but not limited to, a holder of at least a specified number or percentage of the outstanding common shares of the corporation, or a holder offering to purchase at least a specified number or percentage of the outstanding common shares of the corporation, from exercising the rights, options or warrants.

(2) The express or implied authority conferred by subdivision (b)(1) or any other section of this chapter for securities, contracts, warrants, or instruments that evidence such rights, options or warrants to contain a condition on the exercise of such rights, options or warrants that precludes a holder, including, but not limited to, a holder of at least a specified number or percentage of the outstanding common shares of the corporation, or a holder offering to purchase at least a specified number or percentage of the outstanding common shares of the corporation, from exercising rights,

options or warrants, shall apply only to:

(A) A corporation that has issued and has outstanding shares listed on a national securities exchange or is regularly quoted in an over-the-counter market by one (1) or more members of a national or affiliated securities association; or

(B) A corporation that has adopted a shareholder's agreement pursuant to which rights, options or warrants are granted, if the securities, contracts, warrants or instruments that evidence the rights, options or warrants contain a condition that precludes a holder, including, but not limited to, a holder of at least a specified number or percentage of the outstanding common shares of the corporation or a holder offering to purchase at least a specified number or percentage of the outstanding common shares of the corporation, from exercising the rights, options or warrants.

(c) Subject to the conditions set forth in subsection (a), the board of directors may authorize one (1) or more officers to designate the recipients of rights, options, warrants or other equity compensation awards that involve the issuance of shares and determine, within an amount and subject to any other limitations established by the board and, if applicable, the stockholders, the number of such rights, options, warrants or other equity compensation awards and the terms thereof to be received by the recipients; provided, that no officer shall use such authority to designate either such officer or such other persons as the board of directors may specify as a recipient of such rights, options, warrants or other equity compensation awards.

(d) As used in this section, "securities" includes obligations and shares of the corporation.

(e) This section shall apply to any rights, options or warrants, or any contracts, warrants, or instruments that evidence such rights, options or warrants which were issued subsequent to January 1, 1985.

#### **48-17-101. Annual meeting.**

(a) Unless directors are elected by written consent in lieu of an annual meeting as permitted by § 48-17-104, a corporation shall hold a meeting of shareholders annually at a time stated in, or fixed in accordance with, the bylaws.

(b) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

#### **48-17-104. Action without meeting.**

(a) Action required or permitted by chapters 11-27 of this title to be taken at a shareholders' meeting may be taken without a meeting. If all shareholders entitled to vote on the action consent to taking such action without a meeting, the affirmative vote of the number of shares that would be necessary to authorize or take such action at a meeting is the act of the shareholders. The action must be evidenced by one (1) or more written consents describing the

action taken, signed by each shareholder entitled to vote on the action in one (1) or more counterparts, indicating each signing shareholder's vote or abstention on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) The charter may provide that any action required or permitted by chapters 11-27 of this title to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if consents in writing setting forth the action so taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The written consent shall bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(c) If not otherwise determined under § 48-17-103 or § 48-17-107, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (a).

(d) A consent signed under this section has the effect of a meeting vote and may be described as such in any document. Unless the charter, bylaws or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent shall be effective when written consents signed by sufficient shareholders to take the action are delivered to the corporation.

(e) If chapters 11-27 of this title or the charter requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by consent of the voting shareholders, then the corporation must give its nonvoting shareholders written notice of the proposed action at least ten (10) days before the action is taken. The notice must contain or be accompanied by the same material that under chapters 11-27 of this title would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

(f)(1) If action is taken by less than unanimous written consent of the voting shareholders, the corporation must give its non-consenting voting shareholders written notice of the action not more than ten (10) days after:

(A) Written consents sufficient to take the action have been delivered to the corporation; or

(B) Such later date that tabulation of consents is completed pursuant to an authorization under subsection (d).

(2) The notice must reasonably describe the action taken and contain or be accompanied by the same material of this title, would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

(g) The notice requirements in subsections (e) and (f) shall not delay the effectiveness of actions taken by written consent, and a failure to comply with such notice requirements shall not invalidate actions taken by written consent; provided, that this subsection (g) shall not be deemed to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice within the required time period.

(h) An electronic transmission may be used to consent to an action, if the electronic transmission contains or is accompanied by information from which the corporation can determine the date on which the electronic transmission was signed and that the electronic transmission was authorized by the

shareholder, the shareholder's agent or the shareholder's attorney-in-fact.

(i) Delivery of a written consent to the corporation under this section is delivery to the corporation's registered agent at its registered office (or to a designated mailing address such as a post office box if the United States postal service does not deliver to the registered agent's registered office) or to the secretary of the corporation at its principal office (or to a designated mailing address such as a post office box if the United States postal service does not deliver to the corporation's principal office).

#### **48-17-110. Conduct of the meeting.**

(a) At each meeting of shareholders, a chair shall preside. The chair shall be appointed as provided in the bylaws or, in the absence of such provision, by the board.

(b) The chair, unless the charter or bylaws provide otherwise, shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

(c) Any rules adopted for, and the conduct of, the meeting shall be fair to shareholders.

(d) The chair of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes nor any revocations or changes thereto may be accepted.

#### **48-17-203. Proxies.**

(a) A shareholder may vote such shareholder's shares in person or by proxy.

(b) Without limiting the manner in which a shareholder may authorize another person or persons to act for the shareholder as proxy pursuant to this section, the following shall constitute a valid means by which a shareholder may grant such authority:

(1) A shareholder may execute a writing authorizing another person or persons to act for the shareholder as proxy. Execution may be accomplished by the shareholder personally signing such writing or by an attorney-in-fact in the case of an individual shareholder or by an authorized officer, director, employee, agent or attorney-in-fact in the case of any other shareholder signing such writing or causing the shareholder's signature to be affixed to such writing by any reasonable means, including, but not limited to, facsimile signature;

(2) A shareholder may authorize another person or persons to act for the shareholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram, or electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission; provided, that any such telegram, cablegram, or electronic transmission shall either set forth or be submitted with information from which it can be determined that the telegram, cablegram, or electronic transmission was authorized by the shareholder. If it is determined that such telegrams, cablegrams, or electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making such determination shall specify the information

upon which they relied;

(3) Any copy, electronic transmission or other reliable reproduction of such writing or transmission may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided, that such copy, electronic transmission or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(c) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven (11) months unless another period is expressly provided in the appointment form.

(d) An appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

- (1) A pledgee;
- (2) A person who purchased or agreed to purchase the shares;
- (3) A creditor of the corporation who extended it credit under terms requiring the appointment;
- (4) An employee of the corporation whose employment contract requires the appointment; or
- (5) A party to a voting agreement created under § 48-17-302.

(e) In the case of a proxy not made irrevocable under subsection (d), the death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

(f) An appointment made irrevocable under subsection (d) becomes revocable when the interest with which it is coupled is extinguished.

(g) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when such transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(h) Subject to § 48-17-205 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

(i) Each fiduciary, including such acting as executor, administrator, guardian, committee, agent, or trustee, owning shares registered in such person's name as fiduciary, or in the name of another for the convenience of the fiduciary, whether the corporation issuing such shares is foreign or domestic, may, in addition to exercising the voting rights vested in such fiduciary, execute and deliver, or cause to be executed and delivered, a proxy or proxies in accordance with this section to others for the voting of such shares, but subject always to the following limitations:

- (1) If there are two (2) or more fiduciaries acting, the proxy shall be executed by, and voting instructions shall be issued by, agreement of all fiduciaries or a majority of them, and in the event of failure to obtain a majority, each of the fiduciaries shall vote the number of shares held by the

fiduciaries divided by the number of fiduciaries; and

(2) In the event the rights, manner or method of voting or the purpose to be accomplished is fixed by the instrument or instruments appointing the fiduciaries, the directions therein shall govern.

**48-18-107. Resignation of directors.**

(a) A director may resign at any time by delivering a written resignation to the board of directors, or its chair, or to the secretary of the corporation.

(b) A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that it is irrevocable.

**48-18-202. Action without meeting.**

(a) Except to the extent that the charter or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by chapters 11-27 of this title to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation. If all directors consent to taking such action without a meeting, the affirmative vote of the number of directors that would be necessary to authorize or take such action at a meeting is the act of the board. The action must be evidenced by one (1) or more written consents describing the action taken, signed by each director in one (1) or more counterparts, indicating each signing director's vote or abstention on the action, and delivered to the corporation, and shall be included in the minutes or filed with the corporate records reflecting the action taken.

(b) Action taken under this section is the act of the board of directors when one (1) or more consents signed by all the directors are delivered to the corporation. The consent may specify the time at which the action taken thereunder is to be effective. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by all the directors.

(c) A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

**48-18-302. Liability for unlawful distributions.**

(a) A director who votes for or assents to a distribution made in violation of § 48-16-401 or the charter is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating such section or the charter if it is established that the director did not perform such director's duties in compliance with § 48-18-301. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

(b) A director held liable under subsection (a) for an unlawful distribution is entitled to contribution from:

(1) Every other director who could be held liable under subsection (a) for

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the unlawful distribution; and

(2) Each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of § 48-16-401 or the charter.

(c) A proceeding under this section is barred unless it is commenced within two (2) years after the date on which the effect of the distribution was measured under § 48-16-401.

**48-18-303. [Repealed.]**

**48-18-304. [Transferred.]**

**48-18-401. Required officers.**

(a) A corporation has the officers described in its bylaws or designated by its board of directors in accordance with the bylaws. Unless the charter or bylaws provide otherwise, officers shall be elected or appointed by the board of directors.

(b) A duly appointed officer may appoint one (1) or more officers or assistant officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors shall delegate to one (1) of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

(d) The same individual may simultaneously hold more than one (1) office in a corporation.

**48-18-509. Exclusivity of rights — Charter limiting indemnification — Payment of witness expenses.**

(a)(1) The indemnification and advancement of expenses granted pursuant to, or provided by, chapters 11-27 of this title shall not be deemed exclusive of any other rights to which a director seeking indemnification or advancement of expenses may be entitled, whether contained in chapters 11-27 of this title, the charter, or the bylaws or, when authorized by such charter or bylaws, in a resolution of shareholders, a resolution of directors, or an agreement providing for such indemnification; provided, that no indemnification may be made to or on behalf of any director if a judgment or other final adjudication adverse to the director establishes the director's liability:

(A) For any breach of the duty of loyalty to the corporation or its shareholders;

(B) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

(C) Under § 48-18-302.

(2) Nothing contained in chapters 11-27 of this title shall affect any rights to indemnification to which corporate personnel, other than directors, may be entitled by contract or otherwise under law. If the charter limits indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the charter.

(b) This part does not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with the director's appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

**48-18-601. Limitation of actions for breach of fiduciary duty.**

Any action alleging breach of fiduciary duties by directors or officers, including alleged violations of the standards established in § 48-18-301, § 48-18-403 or part 7 of this chapter, must be brought within one (1) year from the date of such breach or violation; provided, that in the event the alleged breach or violation is not discovered nor reasonably should have been discovered within the one-year period, the period of limitation shall be one (1) year from the date such was discovered or reasonably should have been discovered. In no event shall any such action be brought more than three (3) years after the date on which the breach or violation occurred, except where there is fraudulent concealment on the part of the defendant, in which case the action shall be commenced within one (1) year after the alleged breach or violation is, or should have been, discovered.

**48-18-701. Part definitions.**

In this part:

(1) “Control” (including “controlled by”) means:

(A) Having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract, or otherwise; or

(B) Being subject to a majority of the risk of loss from the entity’s activities or entitled to receive a majority of the entity’s residual returns;

(2) “Director’s or officer’s conflicting interest transaction” means a transaction effected or proposed to be effected by the corporation (or by an entity controlled by the corporation):

(A) To which, at the relevant time, the director or officer is a party; or

(B) Respecting which, at the relevant time, the director or officer had knowledge and a material financial interest known to the director or officer; or

(C) Respecting which, at the relevant time, the director or officer knew that a related person was a party or had a material financial interest;

(3) “Fair to the corporation” means, for purposes of § 48-18-702(b)(3), that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was:

(A) Fair in terms of the director’s or officer’s dealings with the corporation; and

(B) Comparable to what might have been obtainable in an arm’s length transaction, given the consideration paid or received by the corporation;

(4) “Material financial interest” means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director’s or officer’s judgment when participating in action on the authorization of the transaction;

(5) “Material relationship” means a familial, financial, professional, employment or other relationship that would reasonably be expected to impair the objectivity of the director’s judgment when participating in the action to be taken;

(6)(A) “Qualified director” means a director who, at the time action is to be taken under § 48-18-703, is not a director:

(i) As to whom the transaction is a director’s or officer’s conflicting

interest transaction; or

(ii) Who has a material relationship with another director as to whom the transaction is a director's or officer's conflicting interest transaction;

(B) The presence of one (1) or more of the following circumstances shall not automatically prevent a director from being a qualified director:

(i) Nomination or election of the director to the current board by any director who is not a qualified director with respect to the matter (or by any person that has a material relationship with that director), acting alone or participating with others; or

(ii) Service as a director of another corporation of which a director who is not a qualified director with respect to the matter (or any individual who has a material relationship with that director), is or was also a director;

(7) "Related person" means:

(A) The director's or officer's spouse;

(B) A child, stepchild, grandchild, parent, step parent, grandparent, sibling, step sibling, half sibling, aunt, uncle, niece or nephew (or spouse of any thereof) of the director or officer or of the director's or officer's spouse;

(C) An individual living in the same home as the director or officer;

(D) An entity (other than the corporation or an entity controlled by the corporation) controlled by the director or officer or any person specified in subdivisions (7)(A)-(C);

(E) A domestic or foreign:

(i) Business or nonprofit corporation (other than the corporation or an entity controlled by the corporation) of which the director or officer is a director but only with respect to a transaction or proposed transaction to which the corporation and the other business or nonprofit corporation are parties or proposed parties and that is a transaction or proposed transaction that is or should be considered by the board of directors of the corporation;

(ii) Unincorporated entity of which the director or officer is a general partner or a member of the governing body; or

(iii) Individual, trust or estate for whom or of which the director or officer is a trustee, guardian, personal representative or like fiduciary; or

(F) A person that is or an entity that is controlled by, an employer of the director or officer;

(8) "Relevant time" means:

(A) The time at which directors' action respecting the transaction is taken in compliance with § 48-18-703; or

(B) If the transaction is not brought before the board of directors of the corporation (or its committee) for action under § 48-18-703, at the time the corporation (or an entity controlled by the corporation) becomes legally obligated to consummate the transaction; and

(9) "Required disclosure" means disclosure of:

(A) The existence and nature of the director's or officer's conflicting interest; and

(B) All facts known to the director or officer respecting the subject matter of the transaction that a director or officer free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

**48-18-702. Judicial action.**

(a) A transaction effected or proposed to be effected by the corporation (or by an entity controlled by the corporation) may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director or officer of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the ground that the director or officer has an interest respecting the transaction, if it is not a director's or officer's conflicting interest transaction.

(b) A director's or officer's conflicting interest transaction may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director or officer of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the ground that the director or officer has an interest respecting the transaction, if:

- (1) Directors' action respecting the transaction was taken in compliance with § 48-18-703 at any time;
- (2) Shareholders' action respecting the transaction was taken in compliance with § 48-18-704 at any time; or
- (3) The transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation.

**48-18-703. Directors' action.**

(a) Directors' action respecting a director's or officer's conflicting interest transaction is effective for purposes of § 48-18-702(b)(1) if the transaction has been authorized by the affirmative vote of a majority (but no fewer than two (2)) of the qualified directors who voted on the transaction, after required disclosure by the conflicted director or officer of information not already known by such qualified directors, or after modified disclosure in compliance with subsection (b); provided, that:

- (1) The qualified directors have deliberated and voted without the participation by any other director; and
- (2) Where the action has been taken by a committee, all members of the committee were qualified directors, and either:
  - (A) The committee was composed of all the qualified directors on the board of directors; or
  - (B) The members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board.

(b) Notwithstanding subsection (a), when a transaction is a director's or officer's conflicting interest transaction only because a related person described in § 48-18-701(7)(E) or (7)(F) is a part to or has a material financial interest in the transaction, the conflicted director or officer is not obligated to make required disclosure to the extent that the director or officer reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule; provided, that the conflicted director or officer discloses to the qualified directors voting on the transaction:

- (1) All the information required to be disclosed that is not so violative;
- (2) The existence and nature of the director's or officer's conflicting interest; and
- (3) The nature of the conflicted director's or officer's duty not to disclose the confidential information.

(c)(1) A majority (but no fewer than two (2)) of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this section.

(2) Where directors' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the charter, the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the board of directors or a committee, in which action directors who are not qualified directors may participate.

#### **48-18-704. Shareholders' action.**

(a) Shareholders' action respecting a director's or officer's conflicting interest transaction is effective for purposes of § 48-18-702(b)(2) if a majority of the votes cast by the holders of all qualified shares are in favor of the transaction after:

(1) Notice to shareholders describing the action to be taken respecting the transaction;

(2) Provision to the corporation of the information referred to in subsection (b); and

(3) Communication to the shareholders entitled to vote on the transaction of the information that is the subject of required disclosure, to the extent the information is not known by them.

(b) A director or officer who has conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes, in writing, of the number of shares that the director or officer knows are not qualified shares under subsection (c), and the identity of the holders of those shares.

(c) For purposes of this section:

(1) "Holder" means, and "held by" refers to, shares held by both a record shareholder (as defined in § 48-23-101) and a beneficial shareholder (as defined in § 48-23-101); and

(2) "Qualified shares" means all shares entitled to be voted with respect to the transaction except for shares that the secretary or other officer or agent of the corporation authorized to tabulate votes either knows, or under subsection (b) is notified, are held by:

(A) A director or officer who has a conflicting interest respecting the transaction; or

(B) A related person of the director or officer (excluding a person described in § 48-18-701(7)(F)).

(d) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of compliance with this section. Subject to subsection (e), shareholders' action that otherwise complies with this section is not affected by the presence of holders, or by the voting, of shares that are not qualified shares.

(e) If a shareholders' vote does not comply with subsection (a) solely because of a director's or officer's failure to comply with subsection (b), and if the director or officer establishes that the failure was not intended to influence and did not in fact determine the outcome of the vote, the court may take such action respecting the transaction and the director or officer, and may give such effect, if any, to the shareholders' vote, as the court considers appropriate in the

circumstances.

(f) Where shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the charter, the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the shareholders, in which action shares that are not qualified shares may participate.

#### **48-20-102. Amendment by board of directors.**

Unless the charter provides otherwise, a corporation's board of directors may adopt one (1) or more amendments to the corporation's charter without shareholder action to:

- (1) Delete the names and addresses of the initial directors;
- (2) Delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state;
- (3) Designate or change the address of the principal office of the corporation (or a mailing address if the United States postal service does not deliver to the principal office);
- (4) Change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding;
- (5) Change the corporate name by substituting the word "corporation," "incorporated," "company," or the abbreviation "corp.," "inc.," or "co.," for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution for the name;
- (6) Designate the street address and zip code of the corporation's current registered office (or a mailing address if the United States postal service does not deliver to the registered office), the county in which the office is located, and the name of its current registered agent at that office, as required by § 48-27-101(b);
- (7) Delete the initial principal office, if an annual report is on file with the secretary of state; or
- (8) Make any other change expressly permitted by chapters 11-27 of this title to be made without shareholder action.

#### **48-21-101. Chapter definitions.**

As used in this chapter, unless the context otherwise requires:

- (1) "Converted entity" means the domestic business corporation or domestic unincorporated entity that adopts a plan of entity conversion or the foreign unincorporated entity converting to a domestic business corporation;
- (2) "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign nonprofit corporation;
- (3) "Eligible interests" means interests or memberships;
- (4) "Filing entity" means an unincorporated entity that is of a type that is created by filing a public organic document;
- (5) "Interest holder" means a person who holds of record an interest;
- (6) "Membership" means the rights of a member in a domestic or foreign nonprofit corporation;
- (7) "Participating shares" means shares however denominated that entitle their holders to participate in distributions on dissolution after all preferences have been paid;

(8) "Party to a merger or share exchange" means any domestic or foreign corporation, or eligible entity that will:

(A) Merge in a plan of merger;

(B) Acquire shares or eligible interests of another domestic or foreign corporation, or an eligible entity in a share exchange; or

(C) Have all of its shares or eligible interests of one (1) or more classes or series acquired in share exchange;

(9) "Survivor" means the corporation or unincorporated entity that is in existence immediately after consummation of a merger or entity conversion pursuant to this chapter; and

(10) "Voting shares" means shares that entitle their holders to vote unconditionally in the election of directors.

#### **48-21-102. Merger.**

(a) One (1) or more corporations may merge with one (1) or more domestic or foreign business corporations or eligible entities pursuant to a plan of merger, or two (2) or more foreign business corporations or domestic or foreign eligible entities may merge into a new domestic business corporation to be created in the merger in the manner provided in this chapter. The merger shall result in a single survivor.

(b) A foreign business corporation, or a foreign eligible entity, may be a party to a merger with a domestic business corporation, or may be created by the terms of the plan of merger, only if the merger is permitted by the laws under which the foreign business corporation or eligible entity is organized or by which it is governed. If the organic law of a domestic eligible entity does not provide procedures for the approval of a merger, a plan of merger may be adopted and approved, the merger effectuated, and dissenters' rights exercised in accordance with the procedures in this chapter and chapter 23 of this title. For the purposes of applying this chapter and chapter 23 of this title:

(1) The eligible entity, its members or interest holders, eligible interests, and organic documents taken together shall be deemed to be a domestic business corporation, shareholders, shares and charter, respectively and vice versa, as the context may require; and

(2) If the business and affairs of the eligible entity are managed by a group of persons that is not identical to the members or interest holders, that group shall be deemed to be the board of directors.

(c) The plan of merger must set forth:

(1) The name of each domestic or foreign business corporation or eligible entity planning to merge and the name of each domestic or foreign business corporation or eligible entity that shall survive the merger;

(2) The terms and conditions of the merger;

(3) The manner and basis of converting the shares of each merging domestic or foreign business corporation and eligible interest of each merging domestic or foreign eligible entity into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interest, cash, other property, or any combination of the foregoing;

(4) The charter of any domestic or foreign business corporation or non-profit corporation, or the organic documents of any domestic or foreign unincorporated entity, to be created by the merger, or if a new domestic or foreign business or nonprofit corporation or unincorporated is not to be created by the merger, any amendments to the survivor's charter or organic

documents; and

(5) Any other provision required by the laws under which any party to the merger is organized or by which it is governed, or by the charter or organic documents of any such party.

(d) The plan of merger may set forth any other provisions relating to the merger.

(e) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with § 48-11-301(j).

(f) The plan of merger may also include a provision that the plan may be amended prior to filing articles of merger, but if the shareholders of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to change:

(1) The amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities, or eligible interests, cash, or other property to be received under the plan by the shareholders of or owners of eligible interests in any party to the merger;

(2) The charter of any corporation, or the organic documents of any unincorporated entity, that will survive or be created as a result of the merger, except for changes permitted by § 48-20-102 or by comparable provisions of the organic laws of any such foreign corporation or domestic or foreign unincorporated entity; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(g) Property held in trust or for charitable purposes under the laws of this state by a domestic or foreign eligible entity shall not be diverted by a merger from the objects for which it was donated, granted, or devised, unless and until the eligible entity obtains a court order specifying the disposition of the property to the extent required by and pursuant to § 35-15-413.

#### **48-21-103. Share exchange.**

(a) Through a share exchange:

(1) A domestic corporation may acquire all of the outstanding shares of one (1) or more classes or series of shares of another domestic or foreign corporation or all of the interests of one (1) or more classes or series of interests of a domestic or foreign other entity, in exchange for shares, other securities, interests, obligations, rights to acquire shares, other securities, or interests, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange; or

(2) All of the shares of one (1) or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign corporation or other entity, in exchange for shares, other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange.

(b) A foreign corporation or eligible entity may be a party to a share exchange only if the share exchange is permitted by the law under which the corporation or other entity is organized or by which it is governed. If the organic law of a domestic other entity does not provide procedures for the approval of a share exchange, a plan of share exchange may be adopted and

approved, the share exchange effectuated, and dissenters' rights exercised in accordance with the procedures, if any, for a merger. If the organic law of a domestic other entity does not provide procedures for the approval of either a share exchange or a merger, a plan of share exchange may be adopted and approved, the share exchange effectuated, and dissenters' rights exercised, in accordance with the procedures in this chapter and chapter 23 of this title. For the purposes of applying this chapter and chapter 23 of this title:

(1) The other entity, its interest holders, interests, and organic documents taken together shall be deemed to be a domestic business corporation, shareholders, shares, and charter, respectively and vice versa, as the context may require; and

(2) If the business and affairs of the other entity are managed by a group of persons that is not identical to the interest holders, that group shall be deemed to be the board of directors.

(c) The plan of share exchange must set forth:

(1) The name of each corporation or other entity whose shares or interests will be acquired and the name of the acquiring corporation or other entity;

(2) The terms and conditions of the share exchange;

(3) The manner and basis of exchanging shares of each corporation or interests in an other entity who shares or interests will be acquired under the share exchange into shares, other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, other property, or any combination of the foregoing; and

(4) Any other provisions required by the laws under which any party to the share exchange is organized or by the charter or organic document of any such party.

(d) The plan of share exchange may set forth other provisions relating to the share exchange.

(e) This section does not limit the power of a domestic corporation to acquire all or part of the shares of one (1) or more classes or series of another corporation or interests of another entity through a voluntary exchange or otherwise.

#### **48-21-104. Action on plan of merger or share exchange.**

In the case of a domestic corporation that is a party to a merger or share exchange:

(1) The plan of merger or share exchange shall be adopted by the board of directors of each party to the merger or share exchange and approved by the shareholders;

(2) Except as provided in subdivision (7) and in § 48-21-105, after adopting the plan of merger or share exchange, the board of directors shall submit the plan of merger or share exchange for approval by the shareholders. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must also transmit to the shareholders the basis for that determination;

(3) The board of directors may condition its submission of the plan of merger or share exchange to its shareholders on any basis;

(4) If the plan of merger or share exchange is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the shareholders' meeting at which the plan is to be submitted for approval. The notice shall state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan of merger or share exchange and shall contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or other entity, the notice shall also include or be accompanied by a copy or summary of the charter or organic documents of that corporation or other entity. If the corporation is to be merged into a corporation or other entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the charter or organizational documents of the new corporation or other entity;

(5) Unless chapters 11-27 of this title, the charter, or the board of directors acting pursuant to subdivision (3) requires a greater vote or a vote by voting groups, the plan of merger or share exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group;

(6) Separate voting by voting groups is required:

(A) On a plan of merger, by each class or series of shares that:

(i) Are to be converted under the plan of merger into shares, other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, other property, or any combination of the foregoing; or

(ii) Would be entitled to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to the charter, would require action by separate voting groups under § 48-20-104;

(B) On a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; or

(C) On a plan of merger or share exchange, if the voting group is entitled under the charter or by agreement to vote as a voting group to approve a plan of merger or share exchange;

(7) Unless the charter otherwise provides, approval by the shareholders of a domestic corporation of a plan of merger or share exchange shall not be required if:

(A) The corporation will survive the merger or is the acquiring corporation in a share exchange;

(B) Except for amendments enumerated in § 48-20-102, its charter will not differ from the charter before the merger;

(C) Each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger or exchange will hold the same number of shares, with identical designations, preferences, limitations and relative rights, immediately after the effective date of the merger or exchange;

(D) The voting power of the shares outstanding immediately after the merger or exchange, plus the voting power of the shares issuable as a result of the merger or exchange (either by the conversion of securities issued pursuant to the merger or exchange or by the exercise of rights and warrants issued pursuant to the merger or exchange), will not exceed by more than twenty percent (20%) the voting power of the total shares of the

corporation outstanding immediately before the merger or exchange; and

(E) The number of participating shares outstanding immediately after the merger or exchange, plus the number of participating shares issuable as a result of the merger or exchange (either by the conversion of securities issued pursuant to the merger or exchange by the exercise of rights and warrants issued pursuant to the merger or exchange), will not exceed more than twenty percent (20%) the total number of participating shares outstanding immediately before the merger or exchange; and

(8) If as a result of a merger or share exchange one (1) or more shareholders of a domestic corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of merger or share exchange shall require the execution, by each shareholder, of a separate written consent to become subject to such owner liability.

#### **48-21-105. Merger of parent and subsidiary.**

(a) A domestic parent corporation owning at least ninety percent (90%) of the outstanding voting shares of each class and series of a domestic or foreign subsidiary corporation or eligible interests of an other entity may either:

(1) Merge the subsidiary corporation or other entity into the parent corporation;

(2) Merge the parent corporation into the subsidiary corporation or other entity; or

(3) Merge two (2) or more such subsidiary corporations or subsidiary other entities with and into each other.

(b) The board of directors of the parent corporation shall adopt a plan of merger that sets forth:

(1) The name of the parent corporation owning at least ninety percent (90%) of the outstanding voting shares of the subsidiary corporation or eligible interests of the other entity and the name of the subsidiary corporation(s) or other entity or entities to be a party to the merger, and the name of the corporation or other entity that is to survive the merger;

(2) The terms and conditions of the merger;

(3) The manner and basis of converting the shares of each corporation or eligible interests of the subsidiary or other entity into shares, eligible interests, obligations or other securities of the survivor or of any other corporation or other entity or into cash or other property or any combination of the foregoing; and

(4) Such other provisions with respect to the proposed merger as the board considers necessary or desirable.

(c) No vote of the shareholders of a subsidiary corporation or approval of interest holders of a subsidiary other entity shall be required with respect to such a merger. If the parent corporation will be the survivor, no vote of its shareholders shall be required. If the subsidiary corporation or other entity will be the survivor, the approval of the shareholders of the parent corporation shall be obtained in the manner provided in § 48-21-104.

(d) If under subsection (c) approval of a merger by the subsidiary's shareholders or interest holders is not required, the parent corporation shall, within ten (10) days after the effective date of the merger, notify each of the subsidiary's shareholders or interest holders that the merger has become

effective.

(e) Except as provided in subsections (a)-(d), a merger between a parent and a subsidiary shall be governed by the provisions of this chapter applicable to mergers generally.

#### **48-21-106. Abandonment of merger.**

(a) After a plan of merger or share exchange has been adopted and approved as required by chapters 11-27 of this title, and at any time before the merger or share exchange has become effective, the merger or share exchange may be abandoned (subject to any contractual rights) by any corporation or other entity that is a party to the merger or share exchange, without action by the shareholders or interest holders of such party, in accordance with the procedures set forth in the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors of such corporation or the managers of such other entity.

(b) If the merger or share exchange is abandoned after articles of merger or share exchange have been filed with the secretary of state but before the merger or share exchange has become effective, a statement, executed on behalf of each party to the merger or share exchange by an officer or other duly authorized representative, stating that the merger or share exchange has been abandoned in accordance with the plan and this section, shall be filed with the secretary of state prior to the effectiveness of the merger or share exchange.

(c) The secretary of state shall, when all fees have been paid as required by law:

- (1) Endorse on the original and each copy the word "filed" and the month, day, and year of the filing thereof;
- (2) File the original in the office of the secretary of state; and
- (3) Issue a certificate of abandonment to each party to the merger or share exchange.

(d) Upon the filing of such statement by the secretary of state, the merger or share exchange shall be deemed abandoned and shall not become effective.

#### **48-21-107. Articles of merger or share exchange.**

(a) After a plan of merger or share exchange has been adopted and approved as required by this chapter, articles of merger or share exchange shall be executed on behalf of each party to the merger or share exchange by an officer or other duly authorized representative and shall set forth:

- (1) The names of the parties to the merger or share exchange and the date on which the merger or share exchange occurred or is to be effective;
- (2) If the charter or organic documents of the survivor of a merger are amended, or if a new corporation is created as a result of a merger, the amendments to the survivor's charter or organic documents or the charter of the new corporation;
- (3) If approval by the shareholders of a domestic corporation that is a party to the merger or exchange is not required by this chapter, a statement to that effect and the date on which the plan was adopted by the board of directors;
- (4) If approval by the shareholders of a domestic corporation that is a party to the merger or exchange is required by this chapter, a statement to that effect and a statement that the plan was approved by the affirmative

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vote of the required percentage of all of:

(A) The votes entitled to be cast if there is no voting by voting groups;

or

(B) The votes entitled to be cast by each voting group having the right to vote separately on the plan and the votes cast by the outstanding shares otherwise entitled to vote on the plan; and

(5) As to each foreign corporation and each other entity that was a party to the merger or share exchange, a statement that the plan and performance of its terms were duly authorized by all action required by the laws under which it was organized and by its charter or organic documents.

(b) The original of the articles of merger or share exchange shall be delivered to the secretary of state for filing together with the required filing fee. A merger or share exchange takes effect upon the effective date of the articles of merger or share exchange.

#### **48-21-108. Effect of merger or share exchange.**

(a) When a merger becomes effective:

(1) The corporation or eligible entity that is designated in the plan of merger as an entity surviving the merger shall survive, and the separate existence of every other corporation or eligible entity that is a party to the merger shall cease;

(2) All property owned by, and every contract right possessed by, each corporation or eligible entity that is merged into the survivor shall be vested in the survivor without reversion or impairment;

(3) All liabilities of each corporation or eligible entity that is merged into the survivor shall be vested in the survivor;

(4) A proceeding pending against any corporation or eligible entity that is a party to the merger may be continued as if the merger did not occur or the name of the survivor may be substituted in the proceeding for any corporation or eligible entity whose existence ceased in the merger;

(5) The charter or organic document of the survivor shall be amended to the extent provided in the plan of merger;

(6) The charter or organic documents of a survivor created by the plan of merger shall become effective; and

(7) The share of each corporation and the interests of each eligible entity that are to be converted into shares, other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, other property, or any combination of the foregoing in the merger shall be converted or exchanged, and the former holders of such shares or eligible interests shall be entitled only to the rights provided to them in the plan of merger or to their rights under chapter 23 of this title or the organic law of the eligible entity.

(b) When a share exchange takes effect, the shares of each corporation that are to be exchanged for shares, other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, other property or any combination of the foregoing in the share exchange shall be exchanged, and the former holders of such shares shall be entitled only to the rights provided in the plan of share exchange or to their rights under chapter 23 of this title.

(c) Upon a merger becoming effective, a foreign corporation, or a foreign eligible entity, that is the survivor of the merger is deemed to:

(1) Appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise dissenters' rights; and

(2) Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under chapter 23 of this title.

(d) The effect of a merger or share exchange on the owner liability of a person who had owner liability for some or all of the debts, obligations or liabilities of a party to the merger or share exchange shall be as follows:

(1) The merger or share exchange does not discharge any owner liability under the organic law of the entity in which the person was a shareholder or interest holder to the extent any such owner liability arose before the effective time of the articles of merger or share exchange;

(2) The person shall not have owner liability under the organic law of the entity in which the person was shareholder or interest holder prior to the merger or share exchange for any debt, obligation or liability that arises after the effective time of the articles of merger or share exchange;

(3) The provisions of the organic law of any entity for which the person had owner liability before the merger or share exchange shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (d)(1), as if the merger or share exchange had not occurred; and

(4) The person shall have whatever rights of contribution from other persons are provided by the organic law of the entity for which the person had owner liability with respect to any owner liability preserved by subdivision (d)(1), as if the merger or share exchange had not occurred.

(e) A merger or share exchange shall take effect upon the date the articles of merger or share exchange are filed as provided in § 48-21-107(b) or on such later date as may be specified in the plan of merger or share exchange.

#### **48-21-109. Entity conversion.**

(a) A domestic business corporation may become a domestic unincorporated entity pursuant to a plan of entity conversion.

(b) A domestic business corporation may become a foreign unincorporated entity if the entity conversion is permitted by the laws of the foreign jurisdiction.

(c) A domestic unincorporated entity may become a domestic business corporation. If the organic law of a domestic unincorporated entity does not provide procedures for the approval of an entity conversion, the conversion shall be adopted and approved, and the entity conversion effectuated, in the same manner as a merger of the unincorporated entity. If the organic law of a domestic unincorporated entity does not provide procedures for the approval of either an entity conversion or a merger, a plan of entity conversion shall be adopted and approved, the entity conversion effectuated, and dissenters' rights exercised, in accordance with the procedures in this chapter and chapter 23 of this title. Without limiting this subsection (c), a domestic unincorporated entity whose organic law does not provide procedures for the approval of an entity conversion shall be subject to subsection (e) and § 48-21-111(7). For purposes of applying this chapter and chapter 23 of this title:

(1) The unincorporated entity, its interest holders, interests, and organic documents taken together, shall be deemed to be a domestic business corporation, shareholders, shares, and charters, respectively, and vice versa,

as the context may require; and

(2) If the business and affairs of the unincorporated entity are managed by a group of persons that is not identical to the interest holders, that group shall be deemed to be the board of directors.

(d) A foreign unincorporated entity may become a domestic business corporation if the organic law of the foreign unincorporated entity authorizes it to become a corporation in another jurisdiction.

(e) If any provision of a debt security, note or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred or executed by a domestic business corporation before January 1, 2013, applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation, the provision shall be deemed to apply to an entity conversion of the corporation until such time as the provision is amended on or subsequent to January 1, 2013.

#### **48-21-110. Plan of entity conversion.**

(a) A plan of entity conversion must include:

(1) A statement of the type of other entity the survivor will be and, if it will be a foreign other entity, its jurisdiction of organization;

(2) The terms and conditions of the conversion;

(3) The manner and basis of converting the shares of the domestic business corporation following its conversion into interests or other securities, obligations, rights to acquire interests or other securities, cash, other property, or any combination of the foregoing; and

(4) The full text, as they will be in effect immediately after consummation of the conversion, of the organic documents of the survivor.

(b) The plan of entity conversion may also include a provision that the plan may be amended prior to filing articles of entity conversion, except that subsequent to approval of the plan by the shareholders, the plan may not be amended to change:

(1) The amount or kind of shares or other securities, interests, obligations, rights to acquire shares, other securities or interests, cash or other property to be received under the plan by the shareholders;

(2) The organic documents that will be in effect immediately following the conversion, except for changes permitted by a provision of the organic law of the survivor comparable to § 48-20-102; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect any of the shareholders in any material respect.

(c) Terms of a plan of entity conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with § 48-11-301.

#### **48-21-111. Action on a plan of entity conversion.**

In the case of an entity conversion of a domestic business corporation to a domestic or foreign unincorporated entity:

(1) The plan of entity conversion must be adopted by the board of directors;

(2) After adopting the plan of entity conversion, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a

determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the shareholders the basis for that determination;

(3) The board of directors may condition its submission of the plan of entity conversion to the shareholders on any basis;

(4) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan of entity conversion is to be submitted for approval. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the organic documents as they will be in effect immediately after the entity conversion;

(5) Unless chapters 11-27 of this title, the charter, or the board of directors acting pursuant to subdivision (3) requires a greater vote or a vote by voting groups, the plan of conversion to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group;

(6) If any provision of the charter, bylaws or an agreement to which any of the directors or shareholders are parties, adopted or entered into before January 1, 2013, applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation, the provision shall be deemed to apply to an entity conversion of the corporation until such time as the provision is subsequently amended; and

(7) If as a result of the conversion one (1) or more shareholders of the corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of conversion shall require the execution, by each such shareholder, of a separate written consent to become subject to such owner liability.

#### **48-21-112. Articles of entity conversion.**

(a) After the conversion of a domestic business corporation to a domestic unincorporated entity has been adopted and approved as required by this chapter, articles of entity conversion shall be executed on behalf of the corporation by any officer or other duly authorized representative. The articles shall:

(1) Set forth the name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the corporation is to be changed, which shall be a name that satisfies the organic law of the survivor;

(2) State the type of unincorporated entity that the survivor will be;

(3) Set forth a statement that the plan of entity conversion was duly approved by the shareholders in the manner required by this chapter and the charter; and

(4) If the survivor is a filing entity, have attached the applicable public organic document; except that provisions that would not be required to be included in a restated public organic document may be omitted.

(b) After the conversion of a domestic unincorporated entity to a domestic business corporation has been adopted and approved as required by the

organic law of the unincorporated entity, articles of entity conversion shall be executed on behalf of the unincorporated entity by any officer or other duly authorized representative. The articles shall:

(1) Set forth the name of the unincorporated entity immediately before the filing of the articles of entity conversion and the name to which the name of the unincorporated entity is to be changed, which shall be a name that satisfies the requirements of § 48-14-101;

(2) Set forth a statement that the plan of entity conversion was duly approved in accordance with the organic law of the unincorporated entity; and

(3) Have attached a charter; except that provisions that would not be required to be included in a restated charter of a domestic business corporation may be omitted.

(c) After the conversion of a foreign unincorporated entity to a domestic business corporation has been authorized as required by the laws of the foreign jurisdiction, articles of entity conversion shall be executed on behalf of the foreign unincorporated entity by any officer or other duly authorized representative. The articles shall:

(1) Set forth the name of the unincorporated entity immediately before the filing of the articles of entity conversion and the name to which the name of the unincorporated entity is to be changed, which shall be a name that satisfies the requirements of § 48-14-101;

(2) Set forth the jurisdiction under the laws of which the unincorporated entity was organized immediately before the filing of the articles of entity conversion and the date on which the unincorporated entity was organized in that jurisdiction;

(3) Set forth a statement that the conversion of the unincorporated entity was duly approved in the manner required by its organic law; and

(4) Have attached a charter; except that provisions that would not be required to be included in a restated charter of a domestic business corporation may be omitted.

(d) The articles of entity conversion shall be delivered to the secretary of state for filing, together with the required filing fee, and shall take effect at the effective time provided in § 48-11-304.

(1) Articles of entity conversion filed under subsection (a) or (b) may be combined with any required conversion filing under the organic law of the domestic unincorporated entity if the combined filing satisfies the requirements of both this section and the other organic law.

(2) The public organic document required to be attached by subsection (a) shall be delivered to the secretary of state for filing, and shall take effect at the effective time of the articles of entity conversion. A filing fee for the public organic document shall be paid to the secretary of state in the amount specified for such public organic document by the applicable law governing the formation of such domestic unincorporated entity.

(3) The charter required to be attached by subsection (b) or (c) shall be delivered to the secretary of state for filing, and shall take effect at the effective time of the articles of entity conversion. The fee for filing the charter shall be paid in accordance with § 48-11-303.

(e) If the converting entity is a foreign unincorporated entity that is authorized to transact business in this state under a provision of law similar to chapter 25 of this title, its certificate of authority or other type of foreign

qualification shall be cancelled automatically on the effective date of its conversion.

**48-21-113. Surrender of charter upon conversion.**

(a) Whenever a domestic business corporation has adopted and approved, in the manner required by this chapter, a plan of entity conversion providing for the corporation to be converted to a foreign unincorporated entity, articles of charter surrender shall be executed on behalf of the corporation by any officer or other duly authorized representative. The articles of charter surrender shall set forth:

(1) The name of the corporation;

(2) A statement that the articles of charter surrender are being filed in connection with the conversion of the corporation to a foreign unincorporated entity;

(3) A statement that the conversion was duly approved by the shareholders in the manner required by this chapter and the charter;

(4) The jurisdiction under the laws of which the survivor will be organized; and

(5) If the survivor will be a nonfiling entity, the address of its executive office immediately after the conversion.

(b) The articles of charter surrender shall be delivered by the corporation to the secretary of state for filing together with the required filing fee. The articles of charter surrender shall take effect on the effective time provided in § 48-11-304.

**48-21-114. Effect of entity conversion.**

(a) When a conversion under § 48-21-111 takes effect:

(1) All title to real and personal property, both tangible and intangible, of the converting entity remains in the survivor without reversion or impairment;

(2) All obligations and liabilities of the converting entity continue as obligations and liabilities of the survivor;

(3) An action or proceeding pending against the converting entity continues against the survivor as if the conversion had not occurred;

(4) In the case of a survivor that is a filing entity, its charter or public organic document and its private organic document become effective;

(5) In the case of a survivor that is a nonfiling entity, its private organic document becomes effective;

(6) The shares or interests of the converting entity are reclassified into shares, interests, other securities, obligations, rights to acquire shares, interests, or other securities, or into cash or other property in accordance with the plan of conversion; and the shareholders or interest holders of the converting entity are entitled only to the rights provided to them under the terms of the conversion and to any dissenters' rights they may have under chapter 23 of this title or under the applicable organic law of the converting entity if it is other than a corporation; and

(7) The survivor is deemed to:

(A) Be incorporated or organized under and subject to the organic law of the converting entity for all purposes;

(B) Be the same corporation or unincorporated entity without interrup-

tion as the converting entity; and

(C) Have been incorporated or otherwise organized on the date that the converting entity was originally incorporated or organized.

(b) When a conversion of a domestic business corporation to a foreign other entity becomes effective, the surviving entity is deemed to:

(1) Appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise dissenters' rights in connection with the conversion; and

(2) Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under chapter 23 of this title.

(c) A shareholder who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the survivor shall be personally liable only for those debts, obligations, or liabilities of the survivor that arise after the effective time of the articles of entity conversion.

(d) The owner liability of an interest holder in an unincorporated entity that converts to a domestic business corporation shall be as follows:

(1) The conversion does not discharge any owner liability under the organic law of the unincorporated entity to the extent any such owner liability arose before the effective time of the articles of entity conversion;

(2) The interest holder shall not have owner liability under the organic law of the unincorporated entity for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of entity conversion;

(3) The provisions of the organic law of the unincorporated entity shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (d)(1), as if the conversion had not occurred; and

(4) The interest holder shall have whatever rights of contribution from other interest holders are provided by the organic law of the unincorporated entity with respect to any owner liability preserved by subdivision (d)(1), as if the conversion had not occurred.

(e) The converting entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and such conversion shall not be deemed to constitute a dissolution of such entity.

(f) The interests of the interest holders of the converting entity, unless otherwise agreed, shall be cancelled and become of no effect whatsoever, with respect to the survivor, and the former holders of such interests shall be entitled only to the rights provided in the plan of conversion or the organic documents for the conversion of shares into interests in the survivor.

(g) A conversion shall take effect upon the date the articles of conversion are filed, as provided in § 48-21-112, or on such later date as may be specified in the plan of conversion.

(h) Notwithstanding any other law to the contrary, this section and § 48-21-109 shall have no effect on the application of title 67 and other state and federal tax statutes. Any tax consequences of the conversion as referenced herein shall continue to be controlled by applicable state and federal tax statutes as they may be amended from time to time.

#### **48-21-115. Abandonment of entity conversion.**

(a) Unless otherwise provided in a plan of entity conversion of a domestic business corporation, after the plan has been adopted and approved as

required by § 48-21-111, and at any time before the entity conversion has become effective, it may be abandoned by the board of directors without action by the shareholders.

(b) If an entity conversion is abandoned after articles of entity conversion or articles of charter surrender have been filed with the secretary of state but before the entity conversion has become effective, a statement that the entity conversion has been abandoned in accordance with this section, executed by an officer or other duly authorized representative, shall be delivered to the secretary of state for filing, together with the required filing fee, prior to the effective date of the entity conversion. Upon filing, the statement shall take effect and the entity conversion shall be deemed abandoned and shall not become effective.

#### **48-21-116. Nonprofit conversion.**

(a) A domestic business corporation may become a domestic nonprofit corporation pursuant to a plan of nonprofit conversion.

(b) A domestic business corporation may become a foreign nonprofit corporation if the nonprofit conversion is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of nonprofit conversion, the foreign nonprofit conversion shall be approved by the adoption by the domestic business corporation of a plan of nonprofit conversion in the manner provided in this section.

(c) The plan of nonprofit conversion must include:

(1) The terms and conditions of the conversion;

(2) The manner and basis of reclassifying the shares of the corporation following its conversion into memberships, if any, or securities, obligations, rights to acquire memberships or securities, cash, other property, or any combination of the foregoing;

(3) Any desired amendments to the charter of the corporation following its conversion; and

(4) If the domestic business corporation is to be converted to a foreign nonprofit corporation, a statement of the jurisdiction in which the corporation will be incorporated after the conversion.

(d) The plan of nonprofit conversion may also include a provision that the plan may be amended prior to filing articles of nonprofit conversion, except that subsequent to approval of the plan by the shareholders the plan may not be amended to change:

(1) The amount or kind of memberships or securities, obligations, rights to acquire memberships or securities, cash, or other property to be received by the shareholders under the plan;

(2) The charter as it will be in effect immediately following the conversion, except for changes permitted by § 48-20-102; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect any of the shareholders in any material respect.

(e) Terms of a plan of nonprofit conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with § 48-11-301.

(f) If any debt security, note or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred or executed by a domestic business corporation before January 1,

2013, contains a provision applying to a merger of the corporation and the document does not refer to a nonprofit conversion of the corporation, the provision shall be deemed to apply to a nonprofit conversion of the corporation until such time as the provision is amended on or subsequent to January 1, 2013.

**48-21-117. Action on a plan of nonprofit conversion.**

In the case of a conversion of a domestic business corporation to a domestic or foreign nonprofit corporation:

(1) The plan of nonprofit conversion must be adopted by the board of directors;

(2) After adopting the plan of nonprofit conversion, the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the shareholders the basis for that determination;

(3) The board of directors may condition its submission of the plan of nonprofit conversion to the shareholders on any basis;

(4) If the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder of the meeting of shareholders at which the plan of nonprofit conversion is to be submitted for approval. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the charter as it will be in effect immediately after the nonprofit conversion;

(5) Unless chapters 11-27 of this title, the charter, or the board of directors acting pursuant to subdivision (3) requires a greater vote or a vote by voting groups, the plan of conversion to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group; and

(6) If any provision of the charter, bylaws, or an agreement to which any of the directors or shareholders are parties, adopted or entered into before January 1, 2013, applies to a merger of the corporation and the document does not refer to a nonprofit conversion of the corporation, the provision shall be deemed to apply to a nonprofit conversion of the corporation until such time as the provision is amended on or subsequent to January 1, 2013.

**48-21-118. Articles of nonprofit conversion.**

(a) After a plan of nonprofit conversion providing for the conversion of a domestic business corporation to a domestic nonprofit corporation has been adopted and approved as required by this chapter, articles of nonprofit conversion shall be executed on behalf of the corporation by any officer or other duly authorized representative. The articles shall set forth:

(1) The name of the corporation immediately before the filing of the articles of nonprofit conversion and if that name does not satisfy the requirements of § 48-54-101, or the corporation desires to change its name in connection with the conversion, a name that satisfies the requirements of

§ 48-54-101; and

(2) A statement that the plan of nonprofit conversion was duly approved by the shareholders in the manner required by this chapter and the charter.

(b) The articles of nonprofit conversion shall have attached a charter that satisfies the requirements of § 48-52-102. Provisions that would not be required to be included in a charter of a domestic nonprofit corporation may be omitted.

(c) The articles of nonprofit conversion shall be delivered to the secretary of state for filing, together with the required filing fee, and shall take effect at the effective time provided in § 48-11-304. The attached charter shall also be delivered to the secretary of state for filing. The fee for filing the charter shall be paid in accordance with § 48-51-303.

#### **48-21-119. Surrender of a charter upon foreign nonprofit conversion.**

(a) Whenever a domestic business corporation has adopted and approved, in the manner required by this chapter, a plan of nonprofit conversion providing for the corporation to be converted to a foreign nonprofit corporation, articles of charter surrender shall be executed on behalf of the corporation by any officer or other duly authorized representative. The articles of charter surrender shall set forth:

(1) The name of the corporation;

(2) A statement that the articles of charter surrender are being filed in connection with the conversion of the corporation to a foreign nonprofit corporation;

(3) A statement that the foreign nonprofit conversion was duly approved by the shareholders in the manner required by this section and the charter; and

(4) The corporation's new jurisdiction of incorporation.

(b) The articles of charter surrender shall be delivered by the corporation to the secretary of state for filing together with the required filing fee. The articles of charter surrender shall take effect on the effective time provided in § 48-11-304.

#### **48-21-120. Effect of nonprofit conversion.**

(a) When a conversion of a domestic business corporation to a domestic nonprofit corporation becomes effective:

(1) The title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without reversion or impairment;

(2) The liabilities of the corporation remain the liabilities of the corporation;

(3) An action or proceeding pending against the corporation continues against the corporation as if the conversion had not occurred;

(4) The charter of the domestic nonprofit corporation becomes effective;

(5) The shares of the corporation are reclassified into memberships, securities, obligations, rights to acquire memberships, or securities, or into cash or other property in accordance with the plan of conversion, and the shareholders are entitled only to the rights provided in the plan of nonprofit conversion or to any rights they may have under chapter 23 of this title; and

(6) The corporation is deemed to:

- (A) Be a domestic nonprofit corporation for all purposes;
  - (B) Be the same corporation without interruption as the corporation that existed prior to the conversion; and
  - (C) Have been incorporated on the date it was originally incorporated as a domestic business corporation.
- (b) When a conversion of a domestic business corporation to a foreign nonprofit corporation becomes effective, the foreign nonprofit corporation is deemed to:
- (1) Appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise dissenters' rights in connection with the conversion; and
  - (2) Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under chapter 23 of this title.
- (c) The owner liability of a shareholder in a domestic business corporation that converts to a domestic nonprofit corporation shall be as follows:
- (1) The conversion does not discharge any owner liability of the shareholder as a shareholder of the business corporation to the extent any such owner liability arose before the effective time of the articles of nonprofit conversion;
  - (2) The shareholder shall not have owner liability for any debt, obligation, or liability of the nonprofit corporation that arises after the effective time of the articles of nonprofit conversion;
  - (3) The laws of this state shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (c)(1), as if the conversion had not occurred and the nonprofit corporation was still a business corporation; and
  - (4) The shareholder shall have whatever rights of contribution from other shareholders are provided by the laws of this state with respect to any owner liability preserved by subdivision (c)(1), as if the conversion had not occurred and the nonprofit corporation was still a business corporation.
- (d) A shareholder who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the nonprofit corporation shall have owner liability only for those debts, obligations, or liabilities of the nonprofit corporation that arise after the effective time of the articles of nonprofit conversion.

#### **48-21-121. Abandonment of a nonprofit conversion.**

- (a) Unless otherwise provided in a plan of nonprofit conversion of a domestic business corporation, after the plan has been adopted and approved as required by this section, and at any time before the nonprofit conversion has become effective, it may be abandoned by the board of directors without action by the shareholders.
- (b) If a nonprofit conversion is abandoned under subsection (a) after articles of nonprofit conversion or articles of charter surrender have been filed with the secretary of state but before the nonprofit conversion has become effective, a statement that the nonprofit conversion has been abandoned in accordance with this section, executed by an officer or other duly authorized representative, shall be delivered to the secretary of state, together with the required filing fee, for filing prior to the effective date of the nonprofit conversion. The statement shall take effect upon filing, and the nonprofit conversion shall be deemed abandoned and shall not become effective.

**48-22-101. Sale of assets in regular course of business and mortgage of assets.**

(a) A corporation may, on the terms and conditions and for the consideration determined by the board of directors:

(1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business;

(2) Mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of its property whether or not in the usual and regular course of business; or

(3) Transfer any or all of the corporation's assets to one (1) or more corporations or other entities all of the shares or interests of which are owned by the corporation.

(b) Unless the charter requires it, approval by the shareholders of a transaction described in subsection (a) is not required.

**48-23-101. Chapter definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Beneficial shareholder" means the person who is a beneficial owner of shares held by a nominee as the record shareholder;

(2) "Corporation" means the issuer of the shares held by a dissenter before the corporate action, and, for purposes of §§ 48-23-203 — 48-23-302, includes the survivor of a merger or conversion or the acquiring entity in a share exchange of that issuer;

(3) "Dissenter" means a shareholder who is entitled to dissent from corporate action under § 48-23-102 and who exercises that right when and in the manner required by part 2 of this chapter;

(4) "Fair value," with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action;

(5) "Interest" means interest from the effective date of the corporate action that gave rise to the shareholder's right to dissent until the date of payment, at the average auction rate paid on United States treasury bills with a maturity of six (6) months (or the closest maturity thereto) as of the auction date for such treasury bills closest to such effective date;

(6) "Record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation; and

(7) "Shareholder" means the record shareholder or the beneficial shareholder.

**48-23-102. Right to dissent.**

(a) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(1) Consummation of a plan of merger to which the corporation is a party:

(A) If shareholder approval is required for the merger by § 48-21-104 or the charter and the shareholder is entitled to vote on the merger if the

merger is submitted to a vote at a shareholders' meeting or the shareholder is a nonconsenting shareholder under § 48-17-104(b) who would have been entitled to vote on the merger if the merger had been submitted to a vote at a shareholders' meeting; or

(B) If the corporation is a subsidiary that is merged with its parent under § 48-21-105;

(2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan if the plan is submitted to a vote at a shareholders' meeting or the shareholder is a nonconsenting shareholder under § 48-17-104(b) who would have been entitled to vote on the plan if the plan had been submitted to a vote at a shareholders' meeting;

(3) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange if the sale or exchange is submitted to a vote at a shareholders' meeting or the shareholder is a nonconsenting shareholder under § 48-17-104(b) who would have been entitled to vote on the sale or exchange if the sale or exchange had been submitted to a vote at a shareholders' meeting, including a sale of all, or substantially all, of the property of the corporation in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one (1) year after the date of sale;

(4) An amendment of the charter that materially and adversely affects rights in respect of a dissenter's shares because it:

(A) Alters or abolishes a preferential right of the shares;

(B) Creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares;

(C) Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

(D) Excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or

(E) Reduces the number of shares owned by the shareholder to a fraction of a share, if the fractional share is to be acquired for cash under § 48-16-104;

(5) Any corporate action taken pursuant to a shareholder vote to the extent the charter, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares; or

(6) Consummation of a conversion of the corporation to another entity pursuant to chapter 21 of this title.

(b) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter may not challenge the corporate action creating the shareholder's entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

(c) Notwithstanding subsection (a), no shareholder may dissent as to any shares of a security which, as of the date of the effectuation of the transaction which would otherwise give rise to dissenters' rights, is listed on an exchange

registered under § 6 of the Securities Exchange Act of 1934, compiled in 15 U.S.C. § 78f, as amended, or is a “national market system security,” as defined in rules promulgated pursuant to the Securities Exchange Act of 1934, compiled in 15 U.S.C. § 78a, as amended.

**48-23-201. Notice of dissenters’ rights.**

(a) Where any corporate action specified in § 48-23-102(a) is to be submitted to a vote at a shareholders’ meeting, the meeting notice (including any meeting notice required under chapters 11-27 to be provided to nonvoting shareholders) must state that the corporation has concluded that the shareholders are, are not, or may be entitled to assert dissenters’ rights under this chapter. If the corporation concludes that dissenters’ rights are or may be available, a copy of this chapter must accompany the meeting notice sent to those record shareholders entitled to exercise dissenters’ rights.

(b) In a merger pursuant to § 48-21-105, the parent corporation must notify in writing all record shareholders of the subsidiary who are entitled to assert dissenters rights that the corporate action became effective. Such notice must be sent within ten (10) days after the corporate action became effective and include the materials described in § 48-23-203.

(c) Where any corporate action specified in § 48-23-102(a) is to be approved by written consent of the shareholders pursuant to § 48-17-104(a) or § 48-17-104(b):

(1) Written notice that dissenters’ rights are, are not, or may be available must be sent to each record shareholder from whom a consent is solicited at the time consent of such shareholder is first solicited and, if the corporation has concluded that dissenters’ rights are or may be available, must be accompanied by a copy of this chapter; and

(2) Written notice that dissenters’ rights are, are not, or may be available must be delivered together with the notice to nonconsenting and nonvoting shareholders required by § 48-17-104(e) and (f), may include the materials described in § 48-23-203 and, if the corporation has concluded that dissenters’ rights are or may be available, must be accompanied by a copy of this chapter.

(d) A corporation’s failure to give notice pursuant to this section will not invalidate the corporate action.

**48-23-202. Notice of intent to demand payment.**

(a) If a corporate action specified in § 48-23-102(a) is submitted to a vote at a shareholders’ meeting, a shareholder who wishes to assert dissenters’ rights with respect to shares for which dissenters’ rights may be asserted under this chapter:

(1) Must deliver to the corporation, before the vote is taken, written notice of the shareholder’s intent to demand payment if the proposed action is effectuated; and

(2) Must not vote, or cause or permit to be voted, any such shares in favor of the proposed action.

(b) If a corporate action specified in § 48-23-102(a) is to be approved by less than unanimous written consent, a shareholder who wishes to assert dissenters’ rights with respect to shares for which dissenters’ rights may be asserted under this chapter must not sign a consent in favor of the proposed action with

respect to such shares.

(c) A shareholder who fails to satisfy the requirements of subsection (a) or subsection (b) is not entitled to payment under this chapter.

**48-23-203. Dissenters' notice.**

(a) If a corporate action requiring dissenters' rights under § 48-23-102(a) becomes effective, the corporation must send a written dissenters' notice and form required by subdivision (b)(1) to all shareholders who satisfy the requirements of § 48-23-202(a) or § 48-23-202(b). In the case of a merger under § 48-21-105, the parent must deliver a dissenters' notice and form to all record shareholders who may be entitled to assert dissenters' rights.

(b) The dissenters' notice must be delivered no earlier than the date the corporate action specified in § 48-23-102(a) became effective, and no later than (10) days after such date, and must:

(1) Supply a form that:

(A) Specifies the first date of any announcement to shareholders made prior to the date the corporate action became effective of the principal terms of the proposed corporate action;

(B) If such announcement was made, requires the shareholder asserting dissenters' rights to certify whether beneficial ownership of those shares for which dissenters' rights are asserted was acquired before that date; and

(C) Requires the shareholder asserting dissenters' rights to certify that such shareholder did not vote for or consent to the transaction;

(2) State:

(A) Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subdivision (b)(2)(B);

(B) A date by which the corporation must receive the form, which date may not be fewer than forty (40) nor more than sixty (60) days after the date the subsection (a) dissenters' notice is sent, and state that the shareholder shall have waived the right to demand payment with respect to the shares unless the form is received by the corporation by such specified date;

(C) The corporation's estimate of the fair value of shares;

(D) That, if requested in writing, the corporation will provide, to the shareholder so requesting, within ten (10) days after the date specified in subdivision (b)(2)(B) the number of shareholders who return the forms by the specified date and the total number of shares owned by them; and

(E) The date by which the notice to withdraw under § 48-23-204 must be received, which date must be within twenty (20) days after the date specified in subdivision (b)(2)(B); and

(3) Be accompanied by a copy of this chapter if the corporation has not previously sent a copy of this chapter to the shareholder pursuant to § 48-23-201.

**48-23-204. Duty to demand payment.**

(a) A shareholder sent a dissenters' notice described in § 48-23-203 must demand payment, certify whether the shareholder acquired beneficial owner-

ship of the shares before the date required to be set forth in the dissenters' notice pursuant to § 48-23-203(b)(2), and deposit the shareholder's certificates in accordance with the terms of the notice.

(b) The shareholder who demands payment and deposits the shareholder's share certificates under subsection (a) retains all other rights of a shareholder until these rights are cancelled or modified by the effectuation of the proposed corporate action.

(c) A shareholder who does not demand payment or deposit the shareholder's share certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for the shareholder's shares under this chapter.

(d) A demand for payment filed by a shareholder may not be withdrawn unless the corporation with which it was filed, or the surviving corporation, consents thereto.

#### **48-24-202. Procedure for and effect of administrative dissolution.**

(a) If the secretary of state determines that one (1) or more grounds exist under § 48-24-201 for dissolving a corporation, the secretary of state shall serve the corporation with notice of the secretary of state's determination under §§ 48-15-104 and 48-15-105, except that such determination may be sent by first class mail.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within two (2) months after service of the communication is perfected under §§ 48-15-104 and 48-15-105, the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under §§ 48-15-104 and 48-15-105, except that the certificate may be sent by first class mail.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under § 48-24-105 and notify claimants under §§ 48-24-106 and 48-24-107.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

(e) Nothing herein shall be deemed to repeal or modify § 67-4-2116 or any other provisions of law relating to the revocation of the charter of a corporation for failure to comply with the provisions thereof.

#### **48-25-103. Application for certificate of authority.**

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

- (1) The name of the foreign corporation and, if different, the name under which the certificate of authority is to be obtained pursuant to § 48-25-106;
- (2) The name of the state or country under whose law it is incorporated;
- (3) Its date of incorporation and period of duration, if other than perpetual;

(4) The street address, including the zip code, of its principal office (or a mailing address such as a post office box if the United States postal service does not deliver to the principal office);

(5) The street address, including the zip code, of its registered office in this state (or a mailing address such as a post office box if the United States postal service does not deliver to the registered office), the county in which the office is located, and the name of its registered agent at that office;

(6) The names and business addresses, including the zip code, of its current directors and officers; and

(7) A statement that it is a corporation for profit.

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated. The certificate shall not bear a date of more than two (2) months prior to the date the application is filed in this state.

(c) If the secretary of state determines upon application that a foreign corporation has been transacting business in this state without a certificate of authority for a period of one (1) year or more, then the secretary of state shall not file the application until the foreign corporation submits a confirmation of good standing.

#### **48-25-108. Change of registered office or registered agent of foreign corporation.**

(a) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(1) Its name;

(2) If the current registered office is to be changed, the street address, including the zip code, of its new registered office (or a mailing address such as a post office box if the United States postal service does not deliver to the new registered office), and the county in which the office is located;

(3) If the current registered agent is to be changed, the name of its new registered agent; and

(4) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of such registered agent's business office, such registered agent may change the street address of the registered office of any foreign corporation for which such registered agent is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile), and delivering to the secretary of state for filing, a statement of change that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

(c) Each foreign corporation authorized to transact business in this state shall comply with § 48-15-101(b).

#### **48-25-302. Procedure for and effect of revocation.**

(a) If the secretary of state determines that one (1) or more grounds exist under § 48-25-301 for revocation of a certificate of authority, the secretary of

state shall serve the foreign corporation with notice of the secretary of state's determination under § 48-25-110, except that such determination may be sent by first class mail. Notice need not be sent if the grounds for revocation are pursuant to § 48-25-301(6) and a certificate of revocation may be sent without the two-month waiting period required by subsection (b).

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within two (2) months after service of the communication is perfected under § 48-25-110, the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign corporation under § 48-25-110, except that the certificate may be sent by first class mail.

(c) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d) The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection (d) is service on the foreign corporation. Upon receipt of process, the secretary of state shall comply with § 48-15-105.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

(f) Nothing herein shall be deemed to repeal or modify § 67-4-2116 or any other provisions of law relating to the suspension of the certificate of authority of foreign corporations for failure to comply with the provisions thereof.

#### **48-25-304. Appeal from denial of reinstatement.**

(a) If the secretary of state denies a foreign corporation's application for reinstatement following administrative revocation, the secretary of state shall serve the corporation under §§ 48-15-104 and 48-15-105 with a notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the chancery court of Davidson County within one (1) month after service of the communication of denial is perfected. The corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of the secretary of state's communication of denial.

(c) The court may summarily order the secretary of state to reinstate the revoked corporation or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

#### **48-26-102. Inspection of records by shareholders.**

(a) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in § 48-26-101(e), if the shareholder gives the corporation written notice of the shareholder's demand at least five (5) business days before the date on which the shareholder wishes to inspect and copy.

(b) A shareholder of a corporation is entitled to inspect and copy, during

regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation, if the shareholder meets the requirements of subsection (c) and gives the corporation written notice of the shareholder's demand at least five (5) business days before the date on which the shareholder wishes to inspect and copy:

(1) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (a);

(2) Accounting records of the corporation; and

(3) The record of shareholders.

(c) A shareholder may inspect and copy the records described in subsection (b) only if:

(1) The shareholder's demand is made in good faith and for a proper purpose;

(2) The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and

(3) The records are directly connected with the shareholder's purpose.

(d) The right of inspection granted by this section may not be abolished or limited by a corporation's charter or bylaws.

(e) This section does not affect:

(1) The right of a shareholder to inspect records under § 48-17-201 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(2) The power of a court, independently of chapters 11-27 of this title, to compel the production of corporate records for examination.

(f) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on the shareholder's behalf.

#### **48-26-105. Inspection of record by directors.**

(a) A director of a corporation is entitled to inspect and copy the books, records and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(b) The chancery court of the county where the corporation's principal office (or if none in this state, its registered officer) is located may order inspection and copying of the books, records and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection (b) on an expedited basis.

(c) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's expenses incurred in connection with the application.

**48-26-106. Exception to notice requirements.**

(a) Whenever notice would otherwise be required to be given under chapters 11-27 of this title to a shareholder, such notice need not be given if:

(1) Notices to shareholders of two (2) consecutive annual meetings, and all notices of meetings during the period between such two (2) consecutive annual meetings, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable and could not be delivered; or

(2) All, but not less than two (2), payments of dividends on securities during a twelve-month period, or two (2) consecutive payments of dividends on securities during a period of more than twelve (12) months, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable or could not be delivered.

(b) If any such shareholder delivers to the corporation a written notice setting forth such shareholder's then current address, the requirement that notice be given to such shareholder shall be reinstated.

**48-26-203. Filing annual report with secretary of state.**

(a) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing an annual report that sets forth:

(1) The name of the corporation and the state or country under whose law it is incorporated;

(2) The street address, including the zip code, of its registered office (or a mailing address such as a post office box if the United States postal service does not deliver to the registered office), the county in which the office is located, and the name of its registered agent at that office in this state;

(3) The street address, including the zip code, of its principal office (or a mailing address such as a post office box if the United States postal service does not deliver to the principal office);

(4) The names and business addresses, including the zip code, of its directors and principal officers; and

(5) The federal employer identification number (FEIN) of the corporation, or its corporation control number as assigned by the secretary of state.

(b) Information in the annual report shall be current as of the date the annual report is executed on behalf of the corporation. An annual report of a domestic corporation that sets forth a change of the principal office of the domestic corporation shall be deemed to be an amendment to the charter of the domestic corporation, and the domestic corporation shall not be required to take any further action to amend the charter of the domestic corporation under chapter 20 of this title with respect to such amendment. An annual report of a foreign corporation that sets forth a change of the principal executive office of the foreign corporation shall be deemed to be an amendment to the certificate of authority of the foreign corporation, and the foreign corporation shall not be required to take any further action to amend the certificate of authority of the foreign corporation under § 48-25-104 with respect to such amendment. An annual report of a domestic or foreign corporation that sets forth a change of the registered office or registered agent of the domestic or foreign corporation shall be deemed to be a statement of change for purposes of §§ 48-15-102 and

48-25-108, respectively, and the domestic or foreign corporation shall not be required to take any further action under §§ 48-15-102 and 48-25-108, respectively, with respect to such change.

(c) Every corporation shall file the annual report with the secretary of state on or before the first day of the fourth month following the close of the corporation's fiscal year, if a domestic corporation or a foreign corporation.

(d) State and national banks shall not be required to file annual reports pursuant to this section.

(e) The secretary of state shall make a report to the commissioner of revenue, by the fifteenth day of each month, of any and all new corporations that have been licensed or authorized to operate in the state during the preceding month, giving the name and address of each new corporation, foreign or domestic.

(f) The secretary of state shall furnish the commissioner of revenue, by the fifteenth day of each month, a list of all corporations that have surrendered their charters, have had their charters revoked, or have ceased to do business in the state during the preceding month.

#### **48-101-702. Part definitions.**

As used in this part, unless the context otherwise requires:

(1) "Limited liability company" or "LLC" means a limited liability company, foreign or domestic, organized under or subject to the Tennessee Limited Liability Company Act, compiled in chapters 201-248 of this title;

(2) "Nonprofit corporation," for the purposes of this part, means a nonprofit corporation, foreign or domestic, incorporated under or subject to chapters 51-68 of this title and exempt from franchise and excise tax as not-for-profit as defined in § 67-4-2004;

(3) "Nonprofit limited liability company" or "nonprofit LLC" means a limited liability company:

(A) That is disregarded as an entity for federal income tax purposes; and

(B) Whose sole member is a nonprofit corporation, foreign or domestic, incorporated under or subject to chapters 51-68 of this title and who is exempt from franchise and excise tax as not-for-profit as defined in § 67-4-2004;

(4) "Parent nonprofit corporation" means a nonprofit corporation that is the sole member of a nonprofit corporation; and

(5) "Subsidiary nonprofit corporation" means a nonprofit corporation whose sole member is a nonprofit corporation.

#### **48-103-203. Part definitions.**

As used in this part, unless the context otherwise requires:

(1) "Affiliate," when used to indicate a relationship with an interested shareholder, means a person that directly or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, or is acting in concert with, a specified person;

(2) "Announcement date," when used in reference to any business combination, means the date of the first public announcement of a final definitive proposal for such business combination;

(3) "Associate," when used to indicate a relationship with an interested

shareholder, means:

(A) Any domestic or foreign corporation, partnership, syndicate, joint venture or other unincorporated organization of which such person is an officer, director, manager or partner (either general or limited) or is, directly or indirectly, the beneficial owner of ten percent (10%) or more of any class of voting stock;

(B) All members or investors in any partnership (either general or limited), syndicate or other unincorporated organization described in subdivision (3)(A);

(C) Any trust or other estate in which such person has at least a ten percent (10%) beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; or

(D) Any parent, child, sibling, in-law (mother, father, sons and daughters), of such person or any relative of such person who has the same residence as such person;

(4) "Beneficial owner," when used with respect to any class or series of shares or other securities, means a person that:

(A) Individually, or with or through any of its affiliates or associates, beneficially owns such shares or other securities, directly or indirectly;

(B) Individually, or with or through any of its affiliates or associates, has or shares with others:

(i) The right to acquire or dispose of, or direct the disposition of such shares or other securities (whether such right is exercisable immediately or only after the passage of time or the satisfaction of one (1) or more other conditions), pursuant to any agreement, arrangement or understanding (whether or not in writing), or upon the exercise of conversion rights, exchange rights, warrants or options or otherwise; provided, that a person shall not be deemed the beneficial owner of any shares or other securities tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates until such tendered shares or other securities are accepted for purchase or exchange; or

(ii) The right to vote or direct the voting of such shares or other securities pursuant to any agreement, arrangement or understanding (whether or not in writing); provided, that a person shall not be deemed the beneficial owner of any shares or other securities under this subdivision (4)(B)(ii) if the agreement, arrangement or understanding to vote such shares or other securities:

(a) Arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the Exchange Act; and

(b) Is not then reportable on a Schedule 13D or 13G under the Exchange Act (or any comparable or successor report); or

(C) Has any agreement, arrangement or understanding (whether or not in writing), for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in subdivision (4)(B)) or disposing of such shares or other securities with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such shares;

(5) "Business combination," when used in reference to any resident domestic corporation and any interested shareholder of such resident domestic corporation or any affiliate or associate of such interested share-

holder, means:

(A) Any merger or consolidation of such resident domestic corporation or any subsidiary of such resident domestic corporation with:

(i) An interested shareholder or any affiliate or associate of such interested shareholder; or

(ii) Any other corporation (whether or not itself an interested shareholder of such resident domestic corporation) which is, or after such merger or consolidation would be, an affiliate or associate of such interested shareholder;

(B) Any exchange of shares or securities convertible into shares of the resident domestic corporation with:

(i) An interested shareholder or any affiliate or associate of such interested shareholder; or

(ii) Any other domestic or foreign corporation (whether or not itself an interested shareholder of the resident domestic corporation) which is, or after the exchange would be, an affiliate or associate of the interested shareholder;

(C) Any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one (1) transaction or a series of transactions) to, with or proposed by or on behalf of an interested shareholder, or any affiliate or associate of such interested shareholder, of assets of such resident domestic corporation or any subsidiary of such resident domestic corporation:

(i) Having an aggregate market value equal to ten percent (10%) or more of the aggregate market value of all the assets, determined on a consolidated basis, of such resident domestic corporation;

(ii) Having an aggregate market value equal to ten percent (10%) or more of the aggregate market value of all the outstanding shares of such resident domestic corporation; or

(iii) Representing ten percent (10%) or more of the net income determined on a consolidated basis of such resident domestic corporation;

(D) Any transaction which results in the issuance or transfer by such resident domestic corporation or any subsidiary of such resident domestic corporation (in one (1) transaction or a series of transactions) of any shares or securities convertible into shares of such resident domestic corporation or any subsidiary of such resident domestic corporation to such interested shareholder or any affiliate or associate of such interested shareholder except pursuant to the exercise of warrants or rights to purchase shares or securities convertible into shares, or a dividend or distribution paid or made pro rata to all shareholders of such resident domestic corporation, or in connection with the exercise or conversion of securities exercisable for or convertible into shares of such resident domestic corporation (or any subsidiary of such resident domestic corporation) which securities were issued and outstanding prior to the interested shareholder's share acquisition date;

(E) The adoption of any plan or proposal for the liquidation or dissolution of such resident domestic corporation, or any reincorporation of the resident domestic corporation in another state or jurisdiction, proposed by or on behalf of, or pursuant to any agreement, arrangement or understanding (whether or not in writing) with, an interested shareholder or any affiliate or associate of such interested shareholder;

(F) Any transaction (whether or not with or into or otherwise involving such interested shareholder), proposed by or on behalf of, or pursuant to any agreement, arrangement or understanding (whether or not in writing) with, an interested shareholder or any affiliate or associate of such interested shareholder, which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class or series of shares or securities convertible into shares entitled to vote or securities that are exchangeable for, convertible into, or carry a right to acquire shares entitled to vote, of such resident domestic corporation or any subsidiary of such resident domestic corporation which are, directly or indirectly, owned or controlled by such interested shareholder or any affiliate or associate of such interested shareholder, except as a result of immaterial changes due to fractional share adjustments; or

(G) Any loans, advances, guarantees, pledges, financial assistance, security arrangements, restrictive covenants or any tax credits or other tax advantages provided by, through or to such resident domestic corporation or any subsidiary of the resident domestic corporation as a result of which an interested shareholder or any affiliate or associate of such interested shareholder receives a benefit, directly or indirectly, except proportionately as a shareholder of such resident domestic corporation;

(6) "Consummation date," with respect to any business combination, means the date of consummation of such business combination;

(7) "Continuing shares" means shares held continuously of record in the name of the beneficial owner or the beneficial owner's trustee, guardian, administrator, executor, conservator or similar fiduciary on behalf of such beneficial owner, on the resident domestic corporation's stock transfer records or reported to the securities and exchange commission on a Schedule 13D or 13G or Form 3 or 4 filing pursuant to the Exchange Act for one (1) year or more prior to the date of the shareholders' meeting at which the charter or bylaw amendment is considered;

(8) "Control," including the terms "controlling," "controlled by" and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract or otherwise. A person's beneficial ownership of ten percent (10%) or more of the voting power of a corporation's outstanding voting stock shall create a presumption that such person has control of such corporation. Notwithstanding the foregoing, a person shall not be deemed to have control of a corporation if such person holds voting power, in good faith and not for the purpose of circumventing this part, as an agent, bank, broker, nominee, custodian or trustee or one (1) or more beneficial owners who do not individually or as a group have control of such corporation;

(9) "Exchange" means any share exchange whether pursuant to a plan of exchange under §§ 48-21-102, 48-21-104, and 48-21-105 or any successor or related statute, rule or law of this state or the comparable statute, rule or law of any other state or jurisdiction;

(10) "Exchange Act" means the Act of Congress known as the Securities Exchange Act of 1934, compiled in 15 U.S.C. § 78a et seq., as the same has been or hereafter may be amended from time to time;

(11) "Interested shareholder," when used in reference to any resident domestic corporation, means any person (other than such resident domestic

corporation or any subsidiary of such resident domestic corporation) that:

(A)(i) Is the beneficial owner, directly or indirectly, of ten percent (10%) or more of the voting power of any class or series of the then outstanding voting stock of such resident domestic corporation; or

(ii) Is an affiliate or associate of such resident domestic corporation and at any time within the five-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of ten percent (10%) or more of the voting power of any class or series of the then outstanding stock of such resident domestic corporation;

(B) For the purpose of determining whether a person is an interested shareholder, the number of shares of voting stock of such resident domestic corporation deemed to be outstanding shall include shares deemed to be beneficially owned by such person through application of subdivision (4), but shall not include any other unissued shares of voting stock of such resident domestic corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise;

(12) "Market value," when used in reference to property of any resident domestic corporation, means:

(A) In the case of shares, the highest closing sale price during the thirty-day period immediately preceding the date in question of a share of such shares on the composite tape for New York Stock Exchange-listed stocks, or, if such shares are not quoted on such composite tape or if such shares are not listed on such exchange, on the principal United States securities exchange registered under the Exchange Act on which such shares are listed or, if such shares are not listed on any such exchange, the highest closing sale price (or bid quotation if no such sale price exists) with respect to such shares during the thirty-day period preceding the date in question on the National Association of Securities Dealers, Inc., Automated Quotations System or any successor system then in use, or if no such price or quotation is available, the fair market value on the date in question of a share of such resident domestic corporation's stock as determined by the board of directors of such resident domestic corporation in good faith; or

(B) In the case of property other than cash or shares, the fair market value of such property on the date in question as determined by the board of directors of such resident domestic corporation in good faith;

(13) "Merger" means any merger whether pursuant to a plan of merger under §§ 48-21-102, 48-21-104, 48-21-105 and 48-21-109 or any successor or related statute, rule or law of this state or the comparable statute, rule or law of any other state or jurisdiction respecting mergers or consolidations;

(14) "Person" means any individual, domestic or foreign corporation, partnership (general or limited), syndicate, joint venture, trust estate, unincorporated association or other entity;

(15) "Resident domestic corporation" means an issuer of voting stock which, as of the share acquisition date in question, is organized under the laws of Tennessee and meets two (2) or more of the following requirements:

(A)(i) The corporation has more than either ten thousand (10,000) or ten percent (10%) of its shareholders resident in Tennessee or more than ten percent (10%) of its outstanding shares held by resident Tennessee shareholders;

(ii) For purposes of this subdivision (15), the record date for determining the percentage, number and residency of the outstanding shares and shareholders shall be the last record date before the event requiring that the determination be made. Residence of each shareholder shall be presumed to be the address appearing in the records of the corporation. Shares held of record by brokers or nominees shall be disregarded if the address of the beneficial owner is known. Shares allocated to the account of an employee or former employee or beneficiaries of employees or former employees of a corporation and held in a plan that is qualified under § 401(a) of the federal Internal Revenue Code of 1986, codified in 26 U.S.C. § 401(a), as amended, and is a defined contribution plan within the meaning of § 414(i) of such Code, codified in 26 U.S.C. § 414(i), shall be deemed, for purposes of this subdivision (15), to be held of record by the employee to whose account such shares are allocated. Any shares which are not allocated under any such plan and which are held by trustees, custodians, administrators or other fiduciaries under the terms of such plan shall be deemed to be held of record by the trustee, custodian, administrator or other fiduciary with residency to be determined by home address in the case of an individual, and principal place of business in the case of a corporation;

(B) The corporation has its principal office or place of business located in this state;

(C) The corporation has the principal office or place of business of a significant subsidiary, representing not less than twenty-five percent (25%) of the issuer's consolidated net sales, located in this state;

(D) The corporation employs more than two hundred fifty (250) individuals in this state or has a combined annual payroll paid to residents of this state which is in excess of five million dollars (\$5,000,000);

(E) The corporation produces goods and/or services in this state which result in annual gross receipts in excess of ten million dollars (\$10,000,000); or

(F) The corporation has physical assets and/or deposits, including those of any subsidiary, located within this state which exceed ten million dollars (\$10,000,000) in value;

(16) "Share" or "shares" means:

(A) Any stock or other equity interest in any class or series of stock designated in the charter of the resident domestic corporation or its subsidiaries, any certificate of interest, any participation in any profit sharing agreement, any voting trust certificate, or any certificate of deposit for stock in any class or series; and

(B) Any security convertible, with or without consideration, into stock or other equity interest in any class or series, or any warrant, call or other option or privilege of buying stock without being bound to do so, or any other security carrying any right to acquire, subscribe to or purchase stock in any class or series;

(17) "Share acquisition date," with respect to any person and any resident domestic corporation, means the date that such person first becomes an interested shareholder of such resident domestic corporation;

(18) "Subsidiary" or "subsidiaries," with respect to any resident domestic corporation, means any other corporation which is wholly owned by the

resident domestic corporation or which is organized under the laws of this state in which a majority of the shares entitled to vote are owned or controlled, directly or indirectly, by such resident or domestic corporation; and

(19) "Voting stock" means all shares of the resident domestic corporation entitled to vote generally in the election of directors.

**50-1-207. Prohibition against requiring any employer or employee to waive their rights under the National Labor Relations Act or requiring acceptance or agreement to any provisions that are mandatory or non-mandatory subjects of collective bargaining under federal labor laws.**

(a) For purposes of this section:

(1) "Employee" means a natural person who performs services for an employer for valuable consideration, and does not include a self-employed independent contractor;

(2) "Employer" means a person, association, or legal or commercial entity receiving services from an employee and, in return, giving compensation of any kind to such employee;

(3) "Federal labor laws" means the National Labor Relations Act, compiled in 29 U.S.C. § 151 et seq., and the Labor Management Relations Act, compiled in 29 U.S.C. § 141 et seq., as amended, presidential executive orders, and federal administrative regulations relating to labor and management or employee and employer issues, and the United States Constitution as amended;

(4) "Multi-employer association" means a bargaining unit composed of independent employers who associate together to negotiate jointly with one (1) or more labor organizations representing the employees of the independent employers within the bargaining unit;

(5) "Political subdivision" means any local governmental entity, including, but not limited to, any municipality, metropolitan government, county, utility district, school district, public building authority, and development district created and existing pursuant to the laws of this state, or any instrumentality of government created by any one (1) or more of the named local governmental entities; and

(6) "State" means the state of Tennessee and its political subdivisions, agencies and instrumentalities.

(b) No law, ordinance, or regulation shall impose any contractual, zoning, permitting, licensing, or other condition that requires any employer or employee to waive their rights under the National Labor Relations Act.

(c) No law, regulation, or ordinance shall require, in whole or in part, an employer or multi-employer association to accept or otherwise agree to any provisions that are mandatory or non-mandatory subjects of collective bargaining under federal labor laws, including but not limited to, any limitations on an employer or multi-employer association's rights to engage in collective bargaining with a labor organization, to lock out employees, or to operate during a work stoppage; provided, that this subsection (c) shall not invalidate or otherwise restrict the state from requiring the use of project labor agreements to the extent permissible under federal labor laws.

(d) This section shall be interpreted and enforced consistent with the

National Labor Relations Act.

(e)(1) Any agreement, contract, understanding, or practice, written or oral, implied or expressed, between any employer and any labor organization required in violation of this section is declared to be unlawful, null, and void, and of no legal effect.

(2) An employer or employee may seek injunctive relief in the chancery court of Davidson county to prevent the state from violating this section.

**50-1-703. Duties of employers — Office of employment verification assistance — Application — Complaints for violations — Commissioner's order on finding of violation — Penalties.**

(a)(1) Employers shall:

(A) For non-employees, request and maintain a copy, pursuant to subdivision (a)(4), of any one (1) of the following documents prior to the non-employee providing labor or services on or after the phase-in period applicable to the particular size employer described in subsection (b):

(i) A valid Tennessee driver license or photo identification license issued by the department of safety;

(ii) A valid driver license or photo identification license issued by another state where the issuance requirements are at least as strict as those in this state, as determined by the department. The commissioner, in consultation with the department of safety, shall determine which states have issuance requirements that are at least as strict as this state, and shall develop, and periodically update, a publicly accessible list of such states on the department's web site;

(iii) An official birth certificate issued by a United States state, jurisdiction or territory;

(iv) A United States government-issued certified birth certificate;

(v) A valid, unexpired United States passport;

(vi) A United States certificate of birth abroad (DS-1350 or FS-545);

(vii) A report of birth abroad of a citizen of the United States (FS-240);

(viii) A certificate of citizenship (N560 or N561);

(ix) A certificate of naturalization (N550, N570 or N578);

(x) A United States citizen identification card (I-197 or I-179); or

(xi) Valid alien registration documentation or other proof of current immigration registration recognized by the United States department of homeland security that contains the individual's complete legal name and current alien admission number or alien file number (or numbers if the individual has more than one (1) number); and

(B) For employees, either:

(i) Request and maintain a copy, pursuant to subdivision (a)(4), of any one (1) of the documents described in (a)(1)(A)(i)-(xi) prior to the employee providing labor or services on or after the phase-in period applicable to the particular size employer described in subsection (b); or

(ii)(a) Enroll in the E-Verify program prior to hiring an employee on or after the applicable phase-in period described in subsection (b);

(b) Verify the work authorization status of the employee hired by using the E-Verify program; and

(c) Maintain a record of any results generated by the E-Verify program for that particular employee in a manner consistent with

subdivision (a)(4).

(2)(A) An employer who verifies the work authorization status of an employee pursuant to subdivision (a)(1)(B)(ii) has not violated § 50-1-103(b) with respect to the particular employee if the employer meets the requirements in § 50-1-103(d).

(B) No employer shall prevail in any proceeding where a violation of § 50-1-103 is alleged if the sole evidence presented by the employer is evidence of compliance with subdivisions (a)(1)(A) or (a)(1)(B)(i).

(3) No employer shall be in violation of subdivision (a)(1)(B) if the employer has requested, but has not received, assistance pursuant to subdivision (a)(6).

(4) An employer shall maintain:

(A) A record of results generated by the E-Verify program pursuant to (a)(1)(B)(ii) with respect to an employee for three (3) years after the date of the employee's hire or for one (1) year after the employee's employment is terminated, whichever is later; and

(B) Documentation received pursuant to subdivisions (a)(1)(A) and (a)(1)(B)(i) for three (3) years after the documentation is received by the employer or for one (1) year after the employee or non-employee ceases to provide labor or services for the employer, whichever is later.

(5) Nothing in this section shall be construed to prevent an employer from contracting with or otherwise obtaining the services of an E-Verify employer agent, or similar third party, for the purpose of complying with subdivision (a)(1)(B)(ii).

(6) There is created within the department the office of employment verification assistance. The department is authorized to enter into any memorandum of understanding or other agreement required by the E-Verify program to operate this office, and shall create no more than one (1) full-time administrative position to staff the office. If an employer does not have Internet access, then the office shall, at no charge to the employer, enroll the employer in the E-Verify program or conduct work authorization status checks of the employer's employees by using the E-Verify program; provided, that the employer signs a prescribed form, under penalty of perjury, attesting to the employer's lack of Internet access and completes any paperwork required by the E-Verify program to permit the office to provide such assistance.

(7) Except as otherwise provided in subsection (c), the department shall conduct an inquiry concerning an employer's compliance with subdivision (a)(1) in conjunction with any pending inquiry, investigation, or inspection of the employer by the department's division of labor standards or workers' compensation division, or any successor divisions thereto. When conducting an inquiry, the commissioner shall provide written notification to the employer of the inquiry and a request for documentation establishing compliance with subdivision (a)(1). The employer shall provide such documentation to the commissioner within thirty (30) days from the date the employer received the department's request. If the employer fails to respond with documentation establishing compliance with subdivision (a)(1) within the thirty-day period, then the commissioner shall issue an initial order pursuant to subsection (d).

(b)(1) On or after January 1, 2012, subsection (a) shall apply to:

(A) Governmental entities; and

(B) Private employers with employees of five hundred (500) or more.

(2) On or after July 1, 2012, subsection (a) shall apply to private employers with employees of two hundred (200) to four hundred ninety-nine (499).

(3) On or after January 1, 2013, subsection (a) shall apply to private employers with employees of six (6) to one hundred ninety-nine (199).

(c)(1) Any lawful resident of this state or employee of a federal agency may file a complaint alleging a violation of subdivision (a)(1) to the department. The complaint shall, at a minimum, include the name of the individual filing the complaint, and satisfactory evidence of a violation as determined by the commissioner.

(2) On receipt of a complaint, the commissioner shall determine if the complaint contains satisfactory evidence of a violation of subdivision (a)(1); provided, that the commissioner shall inform the individual filing the complaint the basis for such determination. The commissioner shall not investigate complaints that are based solely on race, color or national origin.

(3) If the commissioner determines that the complaint contains satisfactory evidence of a violation of subdivision (a)(1), then the commissioner shall conduct an inquiry. When conducting an inquiry, the commissioner shall provide written notification to the employer of the alleged violation of subdivision (a)(1) and a request for documentation establishing compliance with subdivision (a)(1). The employer shall provide such documentation to the commissioner within thirty (30) days from the date the employer received the department's request. Upon request by the employer, the department shall provide the employer with the name of the individual filing a complaint.

(4) Upon the expiration of the thirty-day period in subdivision (c)(3), the commissioner shall make a determination of whether a violation of subdivision (a)(1) occurred. If the employer fails to provide documentation establishing compliance with subdivision (a)(1) within the thirty-day period, then the commissioner shall issue an initial order pursuant to subdivision (d)(1). If documentation is submitted within the thirty-day period, then the commissioner shall determine whether there is clear and convincing evidence of a violation of subdivision (a)(1) based on the documentation submitted, the evidence from the complaint, and other applicable evidence. (d)(1) If the commissioner determines that an employer has violated subdivision (a)(1) pursuant to subdivision (a)(7) or (c)(4), or determines that an employer has violated § 50-1-704, then the commissioner shall issue an initial order that shall include, at a minimum:

- (A) The commissioner's findings and determinations;
- (B) The penalties that will apply if a final order is issued;
- (C) The process to request a contested case hearing; and
- (D) The process by which the commissioner shall waive all penalties for a first violation as provided in subdivision (d)(3).

(2) An employer shall have the right to appeal, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, an initial order issued by the commissioner pursuant to this section; provided, that the employer sends written notice to the commissioner within thirty (30) days of the date of the initial order. If the employer fails to send such written notice, then the contested case hearing process is waived.

(3) The commissioner shall issue a warning in lieu of all penalties for a

first violation of subdivision (a)(1) if:

(A) The employer complies with all remedial action requested by the department to remedy the violation of subdivision (a)(1) within sixty (60) days of the date of the initial order; and

(B) The commissioner determines that the violation of subdivision (a)(1) was not a knowing violation.

(e) If the commissioner does not issue a warning in lieu of penalties pursuant to subdivision (d)(3), then the commissioner shall issue a final order on the date the contested case hearing concludes or is waived and assess penalties in accordance with subsections (f)-(j). The final order shall include, at a minimum, the types of evidence required from the private employer in order to avoid suspension of the private employer's license under subdivision (f)(3).

(f)(1) If the commissioner issues a final order for a violation of subdivision (a)(1) by a private employer, or a violation of § 50-1-704, then the commissioner shall assess the following civil penalties:

(A) Five hundred dollars (\$500) for a first violation;

(B) One thousand dollars (\$1,000) for a second violation; or

(C) Two thousand five hundred dollars (\$2,500) for a third or subsequent violation.

(2) In addition to the civil penalties provided in subdivision (f)(1), the commissioner shall also assess the following civil penalties:

(A) For a first violation, five hundred dollars (\$500) for each employee or non-employee not verified pursuant to subdivisions (a)(1)(A) and (B);

(B) For a second violation, one thousand dollars (\$1,000) for each employee or non-employee not verified pursuant to subdivisions (a)(1)(A) and (B); or

(C) For a third or subsequent violation, two thousand five hundred dollars (\$2,500) for each employee or non-employee not verified pursuant to subdivisions (a)(1)(A) and (B).

(3) The private employer shall submit to the commissioner evidence of compliance with subdivision (a)(1) within sixty (60) days of the final order. If the private employer fails to submit such documentation, then the commissioner shall request an order consistent with § 4-5-320, requiring the appropriate local government with respect to business licensure pursuant to title 67, chapter 4, to suspend the private employer's license until the employer remedies the violation; provided, however, if the private employer's license has also been suspended pursuant to § 50-1-103(e)(1)(A) or (B), then the license shall remain suspended until the expiration of the period provided for in § 50-1-103(e)(1)(A) or (B).

(g) A second or subsequent violation of subdivision (a)(1) shall accrue from a separate inquiry conducted under subdivision (a)(7) or (c)(3).

(h) All moneys collected pursuant to this section shall be deposited into the lawful employment enforcement fund created by § 50-1-708.

(i) The penalties described in this section shall not be mutually exclusive, and may be imposed in conjunction with any applicable penalties as provided by law.

(j) If the commissioner issues a final order for a violation of subdivision (a)(1) by a governmental entity, then the commissioner shall post the violation on the department's web site as provided in § 50-1-705.

**50-2-101. Prospective employee to be informed as to wages — Exceptions — Enforcement.**

(a) As used in this section, “workshops and factories” includes manufacturing, mills, mechanical, electrical, mercantile, art, and laundering establishments, printing, telegraph, and telephone offices, department stores, or any kind of establishment where labor is employed or machinery is used; provided, that domestic service and agricultural pursuits are excluded.

(b) It is unlawful for any proprietor, foreman, owner or other person to employ, permit or suffer to work for hire, in, about, or in connection with any workshop or factory any person whatsoever without first informing the employee of the amount of wages to be paid for the labor. This shall not apply to farm labor. Nothing in this section shall apply to railroad companies engaged in interstate commerce and subject to the federal Railway Labor Act, compiled in 45 U.S.C. § 151 et seq.

(c)(1) The failure on the part of any proprietor, foreman, owner or other person in charge of any industry named in subsection (a) to inform any employee of the wages to be paid as provided in this section is a Class C misdemeanor.

(2) Nothing in this section shall be so construed to preclude the employment of any person or persons on a piece-work basis or on a commission basis.

(d) The department of labor and workforce development shall enforce this section.

**50-2-112. Restrictions on local government authority regarding requiring private employers to pay wages in excess of federal and state minimum hourly wage laws.**

(a)(1) Notwithstanding any charter, ordinance or resolution to the contrary, no local government, as a condition of doing business within the jurisdictional boundaries of the local government or contracting with the local government, has the authority to require a private employer to pay its employees a hourly wage in excess of the minimum hourly wage required to be paid by such employer under applicable federal or state law.

(2) With respect to construction contracts, a local government has no authority to require a prevailing wage be paid in excess of the wages established by the prevailing wage commission for state highway construction projects in accordance with title 12, chapter 4, part 4 or the Tennessee occupational wages prepared annually by the department of labor and workforce development, employment security division, labor market information for state building projects.

(b) As used in this section, “local government” means a county, including any county having a metropolitan form of government, or municipal government, or any agency or unit thereof or any other political subdivision of the state.

(c) If compliance with this section by a local government relative to a specific contract, project, or program would result in the denial of federal funds that would otherwise be available to the local government, then the local government may require a private employer to pay its employees a wage necessary to meet the federal requirements to obtain the federal funds, but only relative to such contract, project, or program.

**50-2-113. State preemption of wage theft laws, ordinances or rules.**

(a) This section shall be known and may be cited as the “Tennessee Wage Protection Act.”

(b) The general assembly finds as a matter of public policy that it is necessary to declare the theft of wages and the denial of fair compensation for work completed to be against the laws and policies of this state.

(c) Employers and employees alike benefit from consistent and established standards of wage theft regulation. Existing federal and state laws, including, but not limited to, the Fair Labor Standards Act, compiled in 29 U.S.C. § 201 et seq., the Davis-Bacon Act, compiled in 40 U.S.C. § 3141 et seq., the McNamara-O’Hara Service Contract Act, compiled in 41 U.S.C. § 6701 et seq., the Migrant and Seasonal Agricultural Protection Act, compiled in 29 U.S.C. § 1801 et seq., the Contract Work Hours and Safety Standards Act, compiled in 29 CFR 5.1 et seq., the Copeland Anti-Kickback Act, codified primarily in 18 U.S.C. § 874 and 40 U.S.C. § 3145, and this chapter, seek to protect employees from predatory and unfair wage practices while also providing appropriate due process to employers.

(d) A county, municipality, or political subdivision of the state shall not adopt or maintain in effect any law, ordinance, or rule that creates requirements, regulations, or processes for the purpose of addressing wage theft. Any additional wage theft ordinance or regulation that exceeds the designated state and federal laws in subsection (c) shall be explicitly preempted by the state.

**50-3-2001. Employer compliance with the federal hazard communication standard and other compliance requirements.**

Each employer shall comply with all of the requirements of the federal hazard communication standard codified in 29 CFR 1910.1200. In addition to the requirements set forth in 29 CFR 1910.1200 each employer must also comply with the following:

(1)(A) Employers shall keep a record of the dates of training sessions given to their employees;

(B) The hazard communication program and employee information and training required of employers pursuant to 29 CFR 1910.1200 and the education and training program pursuant to subdivision (1) shall require annual refresher training after the initial training pursuant to 29 CFR 1910.1200 is conducted, unless the commissioner grants an exemption from annual refresher training. The exemption may be granted if the commissioner determines that the nature of the work assignment, the level of exposure or the nature of the hazardous chemical involved would not reasonably require annual refresher training;

(2)(A) For the purposes of this section only, “workplace” means any workplace as defined in 29 CFR 1910.1200(c) that is located within the fire chief’s actual jurisdiction or that is located in a jurisdiction to which the fire chief responds pursuant to a mutual aid pact;

(B) Employers and distributors who normally store a hazardous chemical in excess of fifty-five gallons (55 gal.) or five hundred pounds (500 lbs.) shall provide the fire chief, in writing, the names and telephone numbers of knowledgeable representatives of the manufacturing employer, non-manufacturing employer or distributor who can be contacted for further

information or in the event of an emergency;

(C) Each employer and distributor shall provide a copy of the workplace chemical list to the fire chief and shall thereafter notify the fire chief of any significant changes that occur in the workplace chemical list;

(D) The fire chief or the fire chief's representative, upon request, shall be permitted on-site inspections of the hazardous chemicals on the workplace chemical list during normal business hours for the sole purpose of preplanning emergency fire department activities;

(E) Employers and distributors, upon written request, shall provide the fire chief a copy of the safety data sheet (SDS) for any chemical on their workplace chemical list;

(F) The fire chief shall, upon request, make the workplace chemical list and SDSs available to members of the fire chief's fire company having jurisdiction over the workplace, or their designated representatives, but shall not otherwise distribute the information without written approval of the manufacturing employer, nonmanufacturing employer or distributor who provided the workplace chemical list or SDSs; except that approval shall not be required in an emergency situation in which human life is at stake. In the event the workplace chemical list or SDSs are released under an emergency situation, the fire chief shall promptly notify the supplier of the workplace chemical list or SDSs, in writing, as to whom the information was released and the circumstances of the emergency. Persons receiving workplace chemical lists or SDSs from the fire chief shall hold the information contained in the workplace chemical lists or SDSs in confidence;

(G)(i) Employers and distributors shall place one (1) sign in accordance with the NFPA704M series on the outside of any building that contains a class A explosive, class B explosive, poison gas (poison A), water-reactive flammable solid (flammable solid W), or radioactive material as listed in Table 1 of the federal department of transportation (DOT) regulations at 49 CFR, Part 172, and further defined in federal DOT regulations at 49 CFR, Part 173, or any other hazardous chemical in excess of the amounts listed in subdivision (2)(B);

(ii) The commissioner shall promulgate rules in accordance with § 50-3-102(b)(3) to establish specifications on the size, color, lettering and posting requirements pursuant to the series. The regulations shall provide that the number used shall be determined by the hazardous chemical that presents the greatest danger;

(iii) The commissioner shall exempt an employer from this subdivision (2)(G) who can satisfactorily demonstrate that:

(a) The employer maintains a trained fire or emergency preparedness team considered capable of handling workplace chemical or fire emergencies without external assistance; or

(b) The employer maintains twenty-four (24) hour security personnel who maintain accurate records of the location of chemicals and who can readily direct emergency personnel from outside sources to affected company facilities;

(H) The department of labor and workforce development shall assist employers and fire personnel to effectuate the purposes of this section;

(3)(A)(i) Manufacturing employers shall compile and maintain a workplace chemical list, which shall contain the following information for

each hazardous chemical known to be present in the workplace:

(a) The chemical name or common name used on the SDS or the container label, or both;

(b) The chemical abstract service (CAS) number for the hazardous chemical, if the number is included on the SDS; and

(c) The work area or workplace in which the hazardous chemical is normally used or stored;

(ii) The manufacturing employer shall maintain the workplace chemical list for no less than thirty (30) years. The manufacturing employer shall send complete records pertinent to the workplace chemical list to the commissioner if the manufacturing employer generating the list ceases to operate a business within the state;

(iii) The workplace chemical list shall be filed with the commissioner within ninety-six (96) hours of a request by an authorized representative of the commissioner;

(B)(i) Nonmanufacturing employers shall compile and maintain a workplace chemical list, which shall contain the following information for each hazardous chemical normally used or stored in the workplace in excess of fifty-five gallons (55 gal.) or five hundred pounds (500 lbs.):

(a) The chemical name or the common name used on the SDS or container label, or both;

(b) The CAS number, if the number is included on the SDS; and

(c) The work area or workplace in which the hazardous chemical is normally stored or used;

(ii) The nonmanufacturing employer shall maintain the workplace chemical list for no less than thirty (30) years. The nonmanufacturing employer shall send complete records pertinent to the workplace chemical list to the commissioner if the nonmanufacturing employer generating the list ceases to operate a business within the state;

(iii) The nonmanufacturing employer shall notify new or newly assigned employees about the workplace chemical list and its contents before working in a work area containing hazardous chemicals;

(iv) The nonmanufacturing employer shall file the workplace chemical list with the commissioner within ninety-six (96) hours of a request by an authorized representative of the commissioner.

(C) The workplace chemical list may consist of either a single listing prepared for the workplace as a whole or a collection of lists prepared for each work area individually;

(D) The department of labor and workforce development shall provide the following information and services:

(i) The CAS number for any hazardous chemical on the workplace chemical list that is not included by the manufacturing or nonmanufacturing employer pursuant to subdivision (3)(D)(i)(a) or (b), if:

(a) The chemical is not a mixture; and

(b) A CAS number exists for the chemical;

(ii) The employer shall make available a copy of the workplace chemical list for inspection by the public during regular office hours at the division's central office or any division field office. The copy must be requested by the public and received by the division as specified by this section;

(iii) Copies of any workplace chemical list may be obtained from the division of occupational safety and health upon written request and payment of a reasonable copying and mailing fee. The division shall provide the list within ten (10) business days of receipt of the written request;

(E) It is the intention of the general assembly, pursuant to this section, to provide access to information concerning hazardous chemicals used and stored in this state to the citizens of this state who live and work in proximity to the chemicals to enable the citizens to make informed decisions concerning their health, safety and welfare.

**50-3-2002. [Repealed.]**

**50-3-2003. [Repealed.]**

**50-3-2004. [Repealed.]**

**50-3-2005. [Repealed.]**

**50-3-2006. [Repealed.]**

**50-3-2007. [Repealed.]**

**50-3-2008. [Repealed.]**

**50-3-2009. [Repealed.]**

**50-3-2010. [Repealed.]**

**50-3-2011. [Repealed.]**

**50-3-2012. [Repealed.]**

**50-3-2013. [Repealed.]**

**50-3-2014. [Repealed.]**

**50-3-2015. [Repealed.]**

**50-3-2016. [Repealed.]**

**50-3-2017. [Repealed.]**

**50-3-2018. [Repealed.]**

**50-3-2019. [Repealed.]**

**50-6-101. Short title. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

This chapter shall be known and may be cited as the “Workers’ Compensation Law.”

**50-6-101. Short title — Controlling law. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*This chapter shall be cited to as the “Workers’ Compensation Law” and shall be controlling for any claim for workers’ compensation benefits for an injury, as defined in this chapter, when the date of injury is on or after July 1, 2014. All claims having a date of injury prior to July 1, 2014, shall be governed by prior law.*

**50-6-102. Chapter definitions. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

As used in this chapter, unless the context otherwise requires:

(1) “Administrator” means the chief administrative officer of the division of workers’ compensation of the department of labor and workforce development;

(2) “AMA guides” means the 6th edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, American Medical Association, until a new edition is designated by the general assembly in accordance with § 50-6-204(d)(3)(C). The edition that is in effect on the date the employee is injured is the edition that shall be applicable to the claim;

(3)(A) “Average weekly wages” means the earnings of the injured employee in the employment in which the injured employee was working at the time of the injury during the period of fifty-two (52) weeks immediately preceding the date of the injury divided by fifty-two (52); but if the injured employee lost more than seven (7) days during the period when the injured employee did not work, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks remaining after the time so lost has been deducted;

(B) Where the employment prior to the injury extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts of weeks during which the employee earned wages shall be followed; provided, that results just and fair to both parties will be obtained;

(C) Where, by reason of the shortness of the time during which the employee has been in the employment of the employer, it is impracticable to compute the average weekly wages as defined in this subdivision (3), regard shall be had to the average weekly amount that, during the first fifty-two (52) weeks prior to the injury or death, was being earned by a person in the same grade, employed at the same work by the same employer, and if there is no such person so employed, by a person in the same grade employed in the same class of employment in the same district;

(D) Wherever allowances of any character made to any employee in lieu of wages are specified as part of the wage contract, they shall be deemed a part of the employee’s earnings;

(4) “Benefit review conference” means a nonadversarial, informal dispute resolution proceeding to mediate and resolve workers’ compensation disputes as provided in this chapter;

(5) “Case management” means medical case management or the ongoing coordination of medical care services provided to an injured or disabled employee on all cases where medical care expenses are expected to exceed a

threshold;

(6) "Commissioner" means the commissioner of labor and workforce development;

(7) "Construction design professional" means:

(A) Any person possessing a valid registration or license entitling that person to practice the technical profession of architecture, engineering, landscape architecture or land surveying in this state;

(B) Any corporation, partnership, firm or other legal entity authorized by law to engage in the technical profession of architecture, engineering, landscape architecture or land surveying in this state; or

(C) Any person, firm or corporation providing interior space planning or design in this state;

(8) "Department" means the department of labor and workforce development;

(9) "Division" or "division of workers' compensation" means the division of workers' compensation of the department of labor and workforce development;

(10)(A) "Employee" includes every person, including a minor, whether lawfully or unlawfully employed, the president, any vice president, secretary, treasurer or other executive officer of a corporate employer without regard to the nature of the duties of the corporate officials, in the service of an employer, as employer is defined in subdivision (11), under any contract of hire or apprenticeship, written or implied. Any reference in this chapter to an employee who has been injured shall, where the employee is dead, also include the employee's legal representatives, dependents and other persons to whom compensation may be payable under this chapter;

(B) "Employee" includes a sole proprietor or a partner who devotes full time to the proprietorship or partnership and elects to be included in the definition of employee by filing written notice of the election with the division at least thirty (30) days before the occurrence of any injury or death, and may at any time withdraw the election by giving notice of the withdrawal to the division;

(C) The provisions of this subdivision (10), allowing a sole proprietor or a partner to elect to come under this chapter, shall not be construed to deny coverage of the sole proprietor or partner under any individual or group accident and sickness policy the sole proprietor or partner may have in effect, in cases where the sole proprietor or partner has elected not to be covered by the provisions of the Workers' Compensation Law, for injuries sustained by the sole proprietor or partner that would have been covered by the provisions of the Workers' Compensation Law had the election been made, notwithstanding any provision of the accident and sickness policy to the contrary. Nothing in this section shall require coverage of occupational injuries or sicknesses, if occupational injuries or sicknesses are not covered under the terms of the policy without reference to eligibility for workers' compensation benefits;

(D) In a work relationship, in order to determine whether an individual is an "employee," or whether an individual is a "subcontractor" or an "independent contractor," the following factors shall be considered:

- (i) The right to control the conduct of the work;
- (ii) The right of termination;
- (iii) The method of payment;

- (iv) The freedom to select and hire helpers;
- (v) The furnishing of tools and equipment;
- (vi) Self-scheduling of working hours; and
- (vii) The freedom to offer services to other entities;

(E) "Employee" does not include a construction services provider, as defined in § 50-6-901, if the construction services provider is:

(i) Listed on the registry established pursuant to part 9 of this chapter as having a workers' compensation exemption and is working in the service of the business entity through which the provider obtained such an exemption;

(ii) Not covered under a policy of workers' compensation insurance maintained by the person or entity for whom the provider is providing services; and

(iii) Rendering services on a construction project that:

(a) Is not a commercial construction project, as defined in § 50-6-901; or

(b) Is a commercial construction project, as defined in § 50-6-901, and the general contractor for whom the construction services provider renders construction services complies with § 50-6-914(b)(2);

(11) "Employer" includes any individual, firm, association or corporation, the receiver or trustee of the individual, firm, association or corporation, or the legal representative of a deceased employer, using the services of not less than five (5) persons for pay, except as provided in § 50-6-902, and, in the case of an employer engaged in the mining and production of coal, one (1) employee for pay. If the employer is insured, it shall include the employer's insurer, unless otherwise provided in this chapter;

(12) "Injury" and "personal injury":

(A) Mean an injury by accident, arising out of and in the course of employment, that causes either disablement or death of the employee; provided, that:

(i) An injury is "accidental" only if the injury is caused by a specific incident, or set of incidents, arising out of and in the course of employment, and is identifiable by time and place of occurrence; and

(ii) The opinion of the physician, selected by the employee from the employer's designated panel of physicians pursuant to §§ 50-6-204(a)(4)(A) or (a)(4)(B), shall be presumed correct on the issue of causation but said presumption shall be rebutted by a preponderance of the evidence;

(B) Include a mental injury arising out of and in the course of employment; and

(C) Do not include:

(i) A disease in any form, except when the disease arises out of and in the course and scope of employment; or

(ii) Cumulative trauma conditions, hearing loss, carpal tunnel syndrome, or any other repetitive motion conditions unless such conditions arose primarily out of and in the course and scope of employment;

(13) "Maximum total benefit" means the sum of all weekly benefits to which a worker may be entitled;

(A) For injuries occurring between July 1, 1990, and June 30, 1991, the maximum total benefit shall be one hundred nine thousand two hundred dollars (\$109,200);

(B) For injuries occurring on or after July 1, 1991, and before August 1, 1992, the maximum total benefit shall be one hundred seventeen thousand six hundred dollars (\$117,600);

(C) For injuries occurring on or after July 1, 1992, the maximum total benefit shall be four hundred (400) weeks times the maximum weekly benefit except in instances of permanent total disability; and

(D) For injuries occurring on or after July 1, 2009, the maximum total benefit shall be four hundred (400) times one hundred percent (100%) of the state's average weekly wage, as determined pursuant to subdivision (14)(B), except in instances of permanent total disability. Temporary total disability benefits paid to the injured worker shall not be included in calculating the maximum total benefit;

(14)(A) "Maximum weekly benefit" means the maximum compensation payable to the worker per week;

(i) For injuries occurring between July 1, 1990, and June 30, 1991, the maximum weekly benefit shall be two hundred seventy-three dollars (\$273) per week;

(ii) For injuries occurring on or after July 1, 1991, and before August 1, 1992, the maximum weekly benefit shall be two hundred ninety-four dollars (\$294) per week;

(iii) For injuries occurring on or after August 1, 1992, and through June 30, 1993, the maximum weekly benefit shall be sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the employee's average weekly wage up to seventy-eight percent (78%) of the state's average weekly wage, as determined by the department;

(iv) For injuries occurring on or after July 1, 1993, and through June 30, 1994, the maximum weekly benefit shall be sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the employee's average weekly wage up to eighty-two and four-tenths percent (82.4%) of the state's average weekly wage, as determined by the department;

(v) For injuries occurring on or after July 1, 1994, and through June 30, 1995, the maximum weekly benefit shall be sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the employee's average weekly wage up to eighty-six and eight-tenths percent (86.8%) of the state's average weekly wage, as determined by the department;

(vi) For injuries occurring on or after July 1, 1995, and through June 30, 1996, the maximum weekly benefit shall be sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the employee's average weekly wage up to ninety-one and two-tenths percent (91.2%) of the state's average weekly wage, as determined by the department;

(vii) For injuries occurring on or after July 1, 1996, and through June 30, 1997, the maximum weekly benefit shall be sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the employee's average weekly wage up to ninety-five and six-tenths percent (95.6%) of the state's average weekly wage as determined by the department;

(viii) For injuries occurring on or after July 1, 1997, and through June 30, 2004, the maximum weekly benefit shall be sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the employee's average weekly wage up to one hundred percent (100%) of the state's average weekly wage as determined by the department;

(ix) For injuries occurring on or after July 1, 2004, the maximum weekly benefit for permanent disability benefits shall be sixty-six and

two thirds percent (66  $\frac{2}{3}$ %) of the employee's average weekly wage up to one hundred percent (100%) of the state's average weekly wage, as determined by the department; and

(x)(a) For injuries occurring on or after July 1, 2004, through June 30, 2005, the maximum weekly benefit for temporary disability benefits shall be sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the employee's average weekly wage up to one hundred five percent (105%) of the state's average weekly wage, as determined by the department; and

(b) For injuries occurring on or after July 1, 2005, the maximum weekly benefit for temporary disability benefits shall be sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the employee's average weekly wage up to one hundred ten percent (110%) of the state's average weekly wage, as determined by the department;

(B) As used in subdivision (14)(A), the state average weekly wage shall be determined as of the preceding January 1, and shall be adjusted annually using the data from the division and shall be effective on July 1 of each year;

(15) "Mental injury" means a loss of mental faculties or a mental or behavioral disorder where the proximate cause is a compensable physical injury resulting in a permanent disability, or an identifiable work-related event resulting in a sudden or unusual mental stimulus. A mental injury shall not include a psychological or psychiatric response due to the loss of employment or employment opportunities;

(16) "Minimum weekly benefit" means the minimum compensation per week payable to the worker;

(A) For injuries occurring between July 1, 1985, and June 30, 1986, the minimum weekly benefit shall be twenty dollars (\$20.00) per week;

(B) For injuries occurring between July 1, 1986, and June 30, 1987, the minimum weekly benefit shall be twenty-five dollars (\$25.00) per week;

(C) For injuries occurring between July 1, 1987, and June 30, 1988, the minimum weekly benefit shall be thirty dollars (\$30.00) per week;

(D) For injuries occurring on or after July 1, 1988, and before July 1, 1993, the minimum weekly benefit shall be thirty-five dollars (\$35.00) per week; and

(E) For injuries occurring on or after July 1, 1993, the minimum weekly benefit shall be fifteen percent (15%) of the state's average weekly wage, as determined by the department;

(17) "Utilization review" means evaluation of the necessity, appropriateness, efficiency and quality of medical care services, including the prescribing of one (1) or more Schedule II, III, or IV controlled substances for pain management for a period of time exceeding ninety (90) days from the initial prescription of such controlled substances, provided to an injured or disabled employee based on medically accepted standards and an objective evaluation of those services provided; provided, that "utilization review" does not include the establishment of approved payment levels, a review of medical charges or fees, or an initial evaluation of an injured or disabled employee by a physician specializing in pain management; and

(18) "Workers' compensation specialist" or "specialist" means a department employee who provides information and communication services regarding workers' compensation for employees and employers, and who conducts benefit review conferences and performs other duties as provided in this chapter.

**50-6-102. Chapter definitions. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*As used in this chapter, unless the context otherwise requires:*

(1) “Administrator” means the chief administrative officer of the division of workers’ compensation of the department of labor and workforce development;

(2) “AMA guides” means the 6th edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, American Medical Association, until a new edition is designated by the general assembly in accordance with § 50-6-204(k)(1)(A). The edition that is in effect on the date the employee is injured is the edition that shall be applicable to the claim;

(3)(A) “Average weekly wages” means the earnings of the injured employee in the employment in which the injured employee was working at the time of the injury during the period of fifty-two (52) weeks immediately preceding the date of the injury divided by fifty-two (52); but if the injured employee lost more than seven (7) days during the period when the injured employee did not work, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks remaining after the time so lost has been deducted;

(B) Where the employment prior to the injury extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts of weeks during which the employee earned wages shall be followed; provided, that results just and fair to both parties will be obtained;

(C) Where, by reason of the shortness of the time during which the employee has been in the employment of the employer, it is impracticable to compute the average weekly wages as defined in this subdivision (3), regard shall be had to the average weekly amount that, during the first fifty-two (52) weeks prior to the injury or death, was being earned by a person in the same grade, employed at the same work by the same employer, and if there is no such person so employed, by a person in the same grade employed in the same class of employment in the same district;

(D) Wherever allowances of any character made to any employee in lieu of wages are specified as part of the wage contract, they shall be deemed a part of the employee’s earnings;

(4) [Deleted by 2013 amendment, effective July 1, 2014.]

(5) “Case management” means medical case management or the ongoing coordination of medical care services provided to an injured or disabled employee on all cases where medical care expenses are expected to exceed a threshold;

(6) “Commissioner” means the commissioner of labor and workforce development;

(7) “Construction design professional” means:

(A) Any person possessing a valid registration or license entitling that person to practice the technical profession of architecture, engineering, landscape architecture or land surveying in this state;

(B) Any corporation, partnership, firm or other legal entity authorized by law to engage in the technical profession of architecture, engineering, landscape architecture or land surveying in this state; or

(C) Any person, firm or corporation providing interior space planning or

*design in this state;*

(8) *“Court of workers’ compensation claims” means the adjudicative function within the division of workers’ compensation;*

(9) *“Department” means the department of labor and workforce development;*

(10) *“Division” or “division of workers’ compensation” means the division of workers’ compensation of the department of labor and workforce development;*

(11)(A) *“Employee” includes every person, including a minor, whether lawfully or unlawfully employed, the president, any vice president, secretary, treasurer or other executive officer of a corporate employer without regard to the nature of the duties of the corporate officials, in the service of an employer, as employer is defined in subdivision (12), under any contract of hire or apprenticeship, written or implied. Any reference in this chapter to an employee who has been injured shall, where the employee is dead, also include the employee’s legal representatives, dependents and other persons to whom compensation may be payable under this chapter;*

(B) *“Employee” includes a sole proprietor or a partner who devotes full time to the proprietorship or partnership and elects to be included in the definition of employee by filing written notice of the election with the division at least thirty (30) days before the occurrence of any injury or death, and may at any time withdraw the election by giving notice of the withdrawal to the division;*

(C) *The provisions of this subdivision (11), allowing a sole proprietor or a partner to elect to come under this chapter, shall not be construed to deny coverage of the sole proprietor or partner under any individual or group accident and sickness policy the sole proprietor or partner may have in effect, in cases where the sole proprietor or partner has elected not to be covered by the provisions of the Workers’ Compensation Law, for injuries sustained by the sole proprietor or partner that would have been covered by the provisions of the Workers’ Compensation Law had the election been made, notwithstanding any provision of the accident and sickness policy to the contrary. Nothing in this section shall require coverage of occupational injuries or sicknesses, if occupational injuries or sicknesses are not covered under the terms of the policy without reference to eligibility for workers’ compensation benefits;*

(D) *In a work relationship, in order to determine whether an individual is an “employee,” or whether an individual is a “subcontractor” or an “independent contractor,” the following factors shall be considered:*

- (i) The right to control the conduct of the work;*
- (ii) The right of termination;*
- (iii) The method of payment;*
- (iv) The freedom to select and hire helpers;*
- (v) The furnishing of tools and equipment;*
- (vi) Self-scheduling of working hours; and*
- (vii) The freedom to offer services to other entities;*

(E) *“Employee” does not include a construction services provider, as defined in § 50-6-901, if the construction services provider is:*

- (i) Listed on the registry established pursuant to part 9 of this chapter as having a workers’ compensation exemption and is working in the service of the business entity through which the provider obtained such*

*an exemption;*

*(ii) Not covered under a policy of workers' compensation insurance maintained by the person or entity for whom the provider is providing services; and*

*(iii) Rendering services on a construction project that:*

*(a) Is not a commercial construction project, as defined in § 50-6-901; or*

*(b) Is a commercial construction project, as defined in § 50-6-901, and the general contractor for whom the construction services provider renders construction services complies with § 50-6-914(b)(2);*

*(12) "Employer" includes any individual, firm, association or corporation, the receiver or trustee of the individual, firm, association or corporation, or the legal representative of a deceased employer, using the services of not less than five (5) persons for pay, except as provided in § 50-6-902, and, in the case of an employer engaged in the mining and production of coal, one (1) employee for pay. If the employer is insured, it shall include the employer's insurer, unless otherwise provided in this chapter;*

*(13) "Injury" and "personal injury" mean an injury by accident, a mental injury, occupational disease including diseases of the heart, lung and hypertension, or cumulative trauma conditions including hearing loss, carpal tunnel syndrome or any other repetitive motion conditions, arising primarily out of and in the course and scope of employment, that causes death, disablement or the need for medical treatment of the employee; provided, that:*

*(A) An injury is "accidental" only if the injury is caused by a specific incident, or set of incidents, arising primarily out of and in the course and scope of employment, and is identifiable by time and place of occurrence, and shall not include the aggravation of a preexisting disease, condition or ailment unless it can be shown to a reasonable degree of medical certainty that the aggravation arose primarily out of and in the course and scope of employment;*

*(B) An injury "arises primarily out of and in the course and scope of employment" only if it has been shown by a preponderance of the evidence that the employment contributed more than fifty percent (50%) in causing the injury, considering all causes;*

*(C) An injury causes death, disablement or the need for medical treatment only if it has been shown to a reasonable degree of medical certainty that it contributed more than fifty percent (50%) in causing the death, disablement or need for medical treatment, considering all causes;*

*(D) "Shown to a reasonable degree of medical certainty" shall mean that, in the opinion of the physician, it is more likely than not considering all causes, as opposed to speculation or possibility;*

*(E) The opinion of the treating physician, selected by the employee from the employer's designated panel of physicians pursuant to § 50-6-204(a)(3), shall be presumed correct on the issue of causation but this presumption shall be rebuttable by a preponderance of the evidence;*

*(14) "Maximum total benefit" means the sum of all weekly benefits to which a worker may be entitled;*

*(A) For injuries occurring on or after July 1, 1992, but before July 1, 2009, the maximum total benefit shall be four hundred (400) weeks times the maximum weekly benefit, except in instances of permanent total*

*disability;*

*(B) For injuries occurring on or after July 1, 2009, but before July 1, 2014, the maximum total benefit shall be four hundred (400) weeks times one hundred percent (100%) of the state's average weekly wage, as determined pursuant to subdivision (15)(B), except in instances of permanent total disability. Temporary total disability benefits paid to the injured worker shall not be included in calculating the maximum total benefit;*

*(C) For injuries occurring on or after July 1, 2014, the maximum total benefit shall be four hundred fifty (450) weeks times one hundred percent (100%) of the state's average weekly wage, as determined pursuant to subdivision (15)(B), except in instances of permanent total disability. Temporary total disability benefits paid to the injured worker before the employee attains maximum medical improvement shall not be included in calculating the maximum total benefit;*

*(15)(A) "Maximum weekly benefit" means the maximum compensation payable to the worker per week;*

*(i) For injuries occurring between July 1, 1990, and June 30, 1991, the maximum weekly benefit shall be two hundred seventy-three dollars (\$273) per week;*

*(ii) For injuries occurring on or after July 1, 1991, and before August 1, 1992, the maximum weekly benefit shall be two hundred ninety-four dollars (\$294) per week;*

*(iii) For injuries occurring on or after August 1, 1992, and through June 30, 1993, the maximum weekly benefit shall be sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the employee's average weekly wage up to seventy-eight percent (78%) of the state's average weekly wage, as determined by the department;*

*(iv) For injuries occurring on or after July 1, 1993, and through June 30, 1994, the maximum weekly benefit shall be sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the employee's average weekly wage up to eighty-two and four-tenths percent (82.4%) of the state's average weekly wage, as determined by the department;*

*(v) For injuries occurring on or after July 1, 1994, and through June 30, 1995, the maximum weekly benefit shall be sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the employee's average weekly wage up to eighty-six and eight-tenths percent (86.8%) of the state's average weekly wage, as determined by the department;*

*(vi) For injuries occurring on or after July 1, 1995, and through June 30, 1996, the maximum weekly benefit shall be sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the employee's average weekly wage up to ninety-one and two-tenths percent (91.2%) of the state's average weekly wage, as determined by the department;*

*(vii) For injuries occurring on or after July 1, 1996, and through June 30, 1997, the maximum weekly benefit shall be sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the employee's average weekly wage up to ninety-five and six-tenths percent (95.6%) of the state's average weekly wage as determined by the department;*

*(viii) For injuries occurring on or after July 1, 1997, and through June 30, 2004, the maximum weekly benefit shall be sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the employee's average weekly wage up to one hundred percent (100%) of the state's average weekly wage as determined by the*

department;

(ix) *For injuries occurring on or after July 1, 2004, the maximum weekly benefit for permanent disability benefits shall be sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the employee's average weekly wage up to one hundred percent (100%) of the state's average weekly wage, as determined by the department; and*

(x)(a) *For injuries occurring on or after July 1, 2004, through June 30, 2005, the maximum weekly benefit for temporary disability benefits shall be sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the employee's average weekly wage up to one hundred five percent (105%) of the state's average weekly wage, as determined by the department; and*

(b) *For injuries occurring on or after July 1, 2005, the maximum weekly benefit for temporary disability benefits shall be sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the employee's average weekly wage up to one hundred ten percent (110%) of the state's average weekly wage, as determined by the department;*

(B) *As used in subdivision (15)(A), the state average weekly wage shall be determined as of the preceding January 1, and shall be adjusted annually using the data from the division and shall be effective on July 1 of each year;*

(16) *"Mental injury" means a loss of mental faculties or a mental or behavioral disorder, arising primarily out of a compensable physical injury or an identifiable work related event resulting in a sudden or unusual stimulus, and shall not include a psychological or psychiatric response due to the loss of employment or employment opportunities;*

(17) *"Minimum weekly benefit" means the minimum compensation per week payable to the worker, which shall be fifteen percent (15%) of the state's average weekly wage, as determined by the department;*

(18) *"Utilization review" means evaluation of the necessity, appropriateness, efficiency and quality of medical care services, including the prescribing of one (1) or more Schedule II, III, or IV controlled substances for pain management for a period of time exceeding ninety (90) days from the initial prescription of such controlled substances, provided to an injured or disabled employee based on medically accepted standards and an objective evaluation of those services provided; provided, that "utilization review" does not include the establishment of approved payment levels, a review of medical charges or fees, or an initial evaluation of an injured or disabled employee by a physician specializing in pain management; and*

(19) *[Deleted by 2013 amendment, effective July 1, 2014.]*

**50-6-103. Scope of chapter. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) Every employer and employee subject to this chapter, shall, respectively, pay and accept compensation for personal injury or death by accident arising out of and in the course of employment without regard to fault as a cause of the injury or death; provided, that any person who has an exemption pursuant to § 50-6-104 or part 9 of this chapter shall not be bound if the employee has given, prior to any accident resulting in injury or death, notice to be exempted from this chapter as provided in this part.

(b) The election by any employee who is a corporate officer of the employer

to be exempted from this chapter, shall not reduce the number of employees of the employer for the purposes of determining the requirements of coverage of the employer under this chapter.

**50-6-103. Scope of chapter. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) Every employer and employee subject to this chapter, shall, respectively, pay and accept compensation for personal injury or death by accident arising primarily out of and in the course and scope of employment without regard to fault as a cause of the injury or death; provided, that any person who has an exemption pursuant to § 50-6-104 or part 9 of this chapter shall not be bound if the employee has given, prior to any accident resulting in injury or death, notice to be exempted from this chapter as provided in this part.*

*(b) [Deleted by 2013 amendment, effective July 1, 2014.]*

**50-6-104. Election of corporate officer to be exempt from chapter. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) Any officer of a corporation may elect to be exempt from the operation of this chapter. Any officer who elects exemption and who, after electing exemption then revokes that exemption, shall give notice to that effect in accordance with a form prescribed by the division.

(b) Notice given pursuant to subsection (a) shall be given thirty (30) days prior to any accident resulting in injury or death; provided, that if any injury or death occurs less than thirty (30) days after the date of employment, notice of the exemption or acceptance given at the time of employment shall be sufficient notice of exemption.

(c) The notice of election not to accept this chapter, shall be as follows: the employee shall give written or printed notice to the employer of the employee's election not to be bound by the Workers' Compensation Law and file with the division, a duplicate, with proof of service on the employer attached to the notice, together with an affidavit of the employee that the action of the employee in rejecting the Workers' Compensation Law was not advised, counseled or encouraged by the employer or by anyone acting for the employer.

(d) This section shall not apply to any officer of a corporation, member of a limited liability company, partner, or sole proprietor who is engaged in the construction industry, as defined by § 50-6-901; instead, part 9 of this chapter shall apply to such officer, member, partner or sole proprietor.

**50-6-104. Election of corporate officer to be exempt from chapter. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) Any officer of a corporation or member of a limited liability company may elect to be exempt from the operation of this chapter. Any officer who elects exemption and who, after electing exemption then revokes that exemption, shall give notice to that effect in accordance with a form prescribed by the division.*

*(b) Notice given pursuant to subsection (a) shall be given thirty (30) days prior to any accident resulting in injury or death; provided, that if any injury or death occurs less than thirty (30) days after the date of employment, notice of the exemption or acceptance given at the time of employment shall be sufficient*

*notice of exemption.*

*(c) The notice of election not to accept this chapter, shall be as follows: the employee shall give written or printed notice to the employer of the employee's election not to be bound by the Workers' Compensation Law and file with the division, a duplicate, with proof of service on the employer attached to the notice, together with an affidavit of the employee that the action of the employee in rejecting the Workers' Compensation Law was not advised, counseled or encouraged by the employer or by anyone acting for the employer.*

*(d) [Deleted by 2013 amendment, effective July 1, 2014.]*

*(e) The election by any employee, who is a corporate officer of the employer or member of a limited liability company, to be exempted from this chapter, shall not reduce the number of employees of the employer for the purposes of determining the requirements of coverage of the employer under this chapter.*

*(f) Every employee who is a corporate officer or member of a limited liability company and who elects not to operate under this chapter, in any action to recover damages for personal injury or death by accident brought against an employer who has elected to operate under this chapter, shall proceed as at common law, and the employer may make use of all common law defenses. This section shall not apply to any officer of a corporation, member of a limited liability company, partner, or sole proprietor who is engaged in the construction industry, as defined by § 50-6-901; instead, part 9 of this chapter shall apply to such officer, member, partner or sole proprietor.*

**50-6-106. Employments not covered. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

This chapter shall not apply to:

(1)(A) Any common carrier doing an interstate business while engaged in interstate commerce, which common carrier and the interstate business are already regulated as to employer's liability or workers' compensation by act of congress, it being the purpose of this law to regulate all such business that the congress has not regulated in the exercise of its jurisdiction to regulate interstate commerce; provided, that this chapter shall apply to those employees of the common carriers with respect to whom a rule of liability is not provided by act of congress; provided, further, that no common carrier by motor vehicle operating pursuant to a certificate of public convenience and necessity shall be deemed the employer of a leased-operator or owner-operator of a motor vehicle or vehicles under a contract to such a common carrier;

(B) Notwithstanding subdivision (1)(A), a leased operator or a leased owner/operator of a motor vehicle under contract to a common carrier may elect to be covered under any policy of workers' compensation insurance insuring the common carrier upon written agreement of the common carrier, by filing written notice of the contract, on a form prescribed by the commissioner, with the division; provided, that the election shall in no way terminate or affect the independent contractor status of the leased operator or leased owner/operator for any other purpose than to permit workers' compensation coverage. The election of coverage may be terminated by the leased operator, leased owner/operator, or common carrier by providing written notice of the termination to the division and to all other parties consenting to the prior election. The termination shall be effective thirty (30) days from the date of the notice to all other parties consenting

to the prior election and to the division;

(2) Any person whose employment at the time of injury is casual, that is, one who is not employed in the usual course of trade, business, profession or occupation of the employer;

(3) Domestic servants and employers of domestic servants;

(4) Farm or agricultural laborers and employers of those laborers;

(5) In cases where fewer than five (5) persons are regularly employed, except as provided in § 50-6-902; provided, that in those cases the employer may accept this chapter by filing written notice of the acceptance with the division at least thirty (30) days before the happening of any accident or death, and may at any time withdraw the acceptance by giving like notice of withdrawal;

(6) The state, counties of the state and municipal corporations; provided, that the state, any county or municipal corporation may accept this chapter by filing written notice of the acceptance with the division under the administrator, at least thirty (30) days before the happening of any accident or death, and may at any time withdraw the acceptance by giving like notice of the withdrawal. The state, any county or municipal corporation may accept this chapter as to any department or division of the state, county or municipal corporation by filing written notice of acceptance with the division under the administrator, at least thirty (30) days before the happening of any accident or death and may, at any time, withdraw acceptance for the division or department by giving like notice of the withdrawal, and the acceptance by the state, county or municipal corporation for any department or division of the state, county or municipal corporation shall have effect only of making the department or division designated subject to the terms of this chapter; or

(7) Any person performing voluntary service as a ski patrolperson who receives no compensation for the services other than meals, lodging or the use of ski tow or ski lift facilities or any combination of meals, lodging and the use of ski tow or ski lift facilities.

**50-6-106. Employments not covered. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*This chapter shall not apply to:*

*(1)(A) Any common carrier doing an interstate business while engaged in interstate commerce, which common carrier and the interstate business are already regulated as to employer's liability or workers' compensation by act of congress, it being the purpose of this law to regulate all such business that the congress has not regulated in the exercise of its jurisdiction to regulate interstate commerce; provided, that this chapter shall apply to those employees of the common carriers with respect to whom a rule of liability is not provided by act of congress; provided, further, that no common carrier by motor vehicle operating pursuant to a certificate of public convenience and necessity shall be deemed the employer of a leased-operator or owner-operator of a motor vehicle or vehicles under a contract to such a common carrier;*

*(B) Notwithstanding subdivision (1)(A), a leased operator or a leased owner/operator of a motor vehicle under contract to a common carrier may elect to be covered under any policy of workers' compensation insurance*

*insuring the common carrier upon written agreement of the common carrier, by filing written notice of the contract, on a form prescribed by the administrator, with the division; provided, that the election shall in no way terminate or affect the independent contractor status of the leased operator or leased owner/operator for any other purpose than to permit workers' compensation coverage. The election of coverage may be terminated by the leased operator, leased owner/operator, or common carrier by providing written notice of the termination to the division and to all other parties consenting to the prior election. The termination shall be effective thirty (30) days from the date of the notice to all other parties consenting to the prior election and to the division;*

*(2) Any person whose employment at the time of injury is casual, that is, one who is not employed in the usual course of trade, business, profession or occupation of the employer;*

*(3) Domestic servants and employers of domestic servants;*

*(4) Farm or agricultural laborers and employers of those laborers;*

*(5) In cases where fewer than five (5) persons are regularly employed, except as provided in § 50-6-902; provided, that in those cases the employer may accept this chapter by filing written notice of the acceptance with the division at least thirty (30) days before the happening of any accident or death, and may at any time withdraw the acceptance by giving like notice of withdrawal;*

*(6) The state, counties of the state and municipal corporations; provided, that the state, any county or municipal corporation may accept this chapter by filing written notice of the acceptance with the division under the administrator, at least thirty (30) days before the happening of any accident or death, and may at any time withdraw the acceptance by giving like notice of the withdrawal. The state, any county or municipal corporation may accept this chapter as to any department or division of the state, county or municipal corporation by filing written notice of acceptance with the division under the administrator, at least thirty (30) days before the happening of any accident or death and may, at any time, withdraw acceptance for the division or department by giving like notice of the withdrawal, and the acceptance by the state, county or municipal corporation for any department or division of the state, county or municipal corporation shall have effect only of making the department or division designated subject to the terms of this chapter; or*

*(7) Any person performing voluntary service as a ski patrolperson who receives no compensation for the services other than meals, lodging or the use of ski tow or ski lift facilities or any combination of meals, lodging and the use of ski tow or ski lift facilities.*

**50-6-108. Right to compensation exclusive. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) The rights and remedies granted to an employee subject to this chapter, on account of personal injury or death by accident, including a minor whether lawfully or unlawfully employed, shall exclude all other rights and remedies of the employee, the employee's personal representative, dependents or next of kin, at common law or otherwise, on account of the injury or death.

(b) This section shall not be construed to preclude third party indemnity actions against an employer who has expressly contracted to indemnify the third party.

**50-6-108. Right to compensation exclusive. [Effective on July 1, 2014.  
See the version effective until July 1, 2014.]**

(a) *The rights and remedies granted to an employee subject to this chapter, on account of personal injury or death by accident, including a minor whether lawfully or unlawfully employed, shall exclude all other rights and remedies of the employee, the employee's personal representative, dependents or next of kin, at common law or otherwise, on account of the injury or death.*

(b) *No employer who fails to secure payment of compensation as required by this chapter, shall be permitted to defend the suit upon any of the following grounds, in any suit brought against the employer by an employee covered by this chapter or by the dependent or dependents of the employee, to recover damages for personal injury or death arising from an accident:*

(1) *The employee was negligent;*

(2) *The injury was caused by the negligence of a fellow servant or fellow employee; or*

(3) *The employee had assumed the risk of the injury.*

(c) *This section shall not be construed to preclude third party indemnity actions against an employer who has expressly contracted to indemnify the third party.*

**50-6-110. Injuries not covered — Drug and alcohol testing. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) No compensation shall be allowed for an injury or death due to:

(1) The employee's willful misconduct;

(2) The employee's intentional self-inflicted injury;

(3) The employee's intoxication or illegal drug usage;

(4) The employee's willful failure or refusal to use a safety device;

(5) The employee's willful failure to perform a duty required by law; or

(6) The employee's voluntary participation in recreational, social, athletic or exercise activities, including, but not limited to, athletic events, competitions, parties, picnics, or exercise programs, whether or not the employer pays some or all of the costs of the activities unless:

(A) Participation was expressly or impliedly required by the employer;

(B) Participation produced a direct benefit to the employer beyond improvement in employee health and morale;

(C) Participation was during employee's work hours and was part of the employee's work-related duties; or

(D) The injury occurred due to an unsafe condition during voluntary participation using facilities designated by, furnished by or maintained by the employer on or off the employer's premises and the employer had actual knowledge of the unsafe condition and failed to curtail the activity or program or cure the unsafe condition.

(b) If the employer defends on the ground that the injury arose in any or all of the ways stated in subsection (a), the burden of proof shall be on the employer to establish the defense.

(c)(1) In cases where the employer has implemented a drug-free workplace pursuant to chapter 9 of this title, if the injured employee has, at the time of the injury, a blood alcohol concentration level equal to or greater than eight hundredths of one percent (.08%) for non-safety sensitive positions, or four hundredths of one percent (.04%) for safety-sensitive positions, as deter-

mined by blood or breath testing, or if the injured employee has a positive confirmation of a drug as defined in § 50-9-103, then it is presumed that the drug or alcohol was the proximate cause of the injury. This presumption may be rebutted by clear and convincing evidence that the drug or alcohol was not the proximate cause of injury. Percent by weight of alcohol in the blood must be based upon grams of alcohol per one hundred milliliters (100 mL) of blood. If the results are positive, the testing facility must maintain the specimen for a minimum of three hundred sixty-five (365) days at minus twenty degrees celsius (-20° C.). Blood serum may be used for testing purposes under this chapter; provided, however, that if this test is used, the presumptions under this section do not arise unless the blood alcohol level is proved to be medically and scientifically equivalent to or greater than the comparable blood alcohol level that would have been obtained if the test were based on percent by weight of alcohol in the blood. However, if, before the accident, the employer had actual knowledge of and acquiesced in the employee's presence at the workplace while under the influence of alcohol or drugs, the employer retains the burden of proof in asserting any defense under subsections (a) and (b), and this subsection (c) does not apply.

(2) If the injured worker refuses to submit to a drug test, it shall be presumed, in the absence of clear and convincing evidence to the contrary, that the proximate cause of the injury was the influence of drugs, as defined in § 50-9-103.

(3) The commissioner of labor and workforce development shall provide, by rule, for the authorization and regulation of drug testing policies, procedures and methods. Testing of injured employees pursuant to a drug-free workplace program under chapter 9 of this title shall not commence until the rules are adopted.

**50-6-110. Injuries not covered — Drug and alcohol testing. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) No compensation shall be allowed for an injury or death due to:*

- (1) The employee's willful misconduct;*
- (2) The employee's intentional self-inflicted injury;*
- (3) The employee's intoxication or illegal drug usage;*
- (4) The employee's willful failure or refusal to use a safety device;*
- (5) The employee's willful failure to perform a duty required by law; or*
- (6) The employee's voluntary participation in recreational, social, athletic or exercise activities, including, but not limited to, athletic events, competitions, parties, picnics, or exercise programs, whether or not the employer pays some or all of the costs of the activities unless:*

- (A) Participation was expressly or impliedly required by the employer;*
- (B) Participation produced a direct benefit to the employer beyond improvement in employee health and morale;*
- (C) Participation was during employee's work hours and was part of the employee's work-related duties; or*
- (D) The injury occurred due to an unsafe condition during voluntary participation using facilities designated by, furnished by or maintained by the employer on or off the employer's premises and the employer had actual knowledge of the unsafe condition and failed to curtail the activity or*

*program or cure the unsafe condition.*

*(b) If the employer defends on the ground that the injury arose in any or all of the ways stated in subsection (a), the burden of proof shall be on the employer to establish the defense.*

*(c)(1) In cases where the employer has implemented a drug-free workplace pursuant to chapter 9 of this title, if the injured employee has, at the time of the injury, a blood alcohol concentration level equal to or greater than eight hundredths of one percent (.08%) for non-safety sensitive positions, or four hundredths of one percent (.04%) for safety-sensitive positions, as determined by blood or breath testing, or if the injured employee has a positive confirmation of a drug as defined in § 50-9-103, then it is presumed that the drug or alcohol was the proximate cause of the injury. This presumption may be rebutted by clear and convincing evidence that the drug or alcohol was not the proximate cause of injury. Percent by weight of alcohol in the blood must be based upon grams of alcohol per one hundred milliliters (100 mL) of blood. If the results are positive, the testing facility must maintain the specimen for a minimum of three hundred sixty-five (365) days at minus twenty degrees celsius (-20° C.). Blood serum may be used for testing purposes under this chapter; provided, however, that if this test is used, the presumptions under this section do not arise unless the blood alcohol level is proved to be medically and scientifically equivalent to or greater than the comparable blood alcohol level that would have been obtained if the test were based on percent by weight of alcohol in the blood. However, if, before the accident, the employer had actual knowledge of and acquiesced in the employee's presence at the workplace while under the influence of alcohol or drugs, the employer retains the burden of proof in asserting any defense under subsections (a) and (b), and this subsection (c) does not apply.*

*(2) If the injured worker refuses to submit to a drug test, it shall be presumed, in the absence of clear and convincing evidence to the contrary, that the proximate cause of the injury was the influence of drugs, as defined in § 50-9-103.*

*(3) The administrator of the division of workers' compensation shall provide, by rule, for the authorization and regulation of drug testing policies, procedures and methods. Testing of injured employees pursuant to a drug-free workplace program under chapter 9 of this title shall not commence until the rules are adopted.*

**50-6-111. Defenses not available to employer failing to secure payment of compensation. [Effective until July 1, 2014.]**

No employer who fails to secure payment of compensation as required by this chapter, shall, in any suit brought against the employer by an employee covered by this chapter or by the dependent or dependents of the employee, to recover damages for personal injury or death arising from an accident, be permitted to defend the suit upon any of the following grounds:

- (1) The employee was negligent;
- (2) The injury was caused by the negligence of a fellow servant or fellow employee; or
- (3) The employee had assumed the risk of the injury.

**50-6-113. Liability of principal intermediate contractor or subcontractor. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) A principal contractor, intermediate contractor or subcontractor shall be liable for compensation to any employee injured while in the employ of any of the subcontractors of the principal contractor, intermediate contractor or subcontractor and engaged upon the subject matter of the contract to the same extent as the immediate employer.

(b) Any principal contractor, intermediate contractor or subcontractor who pays compensation under subsection (a) may recover the amount paid from any person who, independently of this section, would have been liable to pay compensation to the injured employee, or from any intermediate contractor.

(c) Every claim for compensation under this section shall be in the first instance presented to and instituted against the immediate employer, but the proceedings shall not constitute a waiver of the employee's rights to recover compensation under this chapter from the principal contractor or intermediate contractor; provided, that the collection of full compensation from one (1) employer shall bar recovery by the employee against any others, nor shall the employee collect from all a total compensation in excess of the amount for which any of the contractors is liable.

(d) This section applies only in cases where the injury occurred on, in, or about the premises on which the principal contractor has undertaken to execute work or that are otherwise under the principal contractor's control or management.

(e) A subcontractor under contract to a general contractor may elect to be covered under any policy of workers' compensation insurance insuring the contractor upon written agreement of the contractor, by filing written notice of the election, on a form prescribed by the commissioner, with the division. It is the responsibility of the general contractor to file the written notice with the division. Failure of the general contractor to file the written notice shall not operate to relieve or alter the obligation of an insurance company to provide coverage to a subcontractor when the subcontractor can produce evidence of payment of premiums to the insurance company for the coverage. The election shall in no way terminate or affect the independent contractor status of the subcontractor for any other purpose than to permit workers' compensation coverage. The election of coverage may be terminated by the subcontractor or general contractor by providing written notice of the termination to the division and to all other parties consenting to the prior election. The termination shall be effective thirty (30) days from the date of the notice to all other parties consenting to the prior election and to the division.

(f)(1) [Deleted by 2010 amendment.]

(2) [Deleted by 2010 amendment.]

(3) [Deleted by 2010 amendment.]

(4) [Deleted by 2008 amendment.]

(g) [Deleted by 2010 amendment.]

(h) This section shall not apply to a construction services provider, as defined by § 50-6-901.

**50-6-113. Liability of principal intermediate contractor or subcontractor. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) A principal contractor, intermediate contractor or subcontractor shall be liable for compensation to any employee injured while in the employ of any of the subcontractors of the principal contractor, intermediate contractor or subcontractor and engaged upon the subject matter of the contract to the same extent as the immediate employer.*

*(b) Any principal contractor, intermediate contractor or subcontractor who pays compensation under subsection (a) may recover the amount paid from any person who, independently of this section, would have been liable to pay compensation to the injured employee, or from any intermediate contractor.*

*(c) Every claim for compensation under this section shall be in the first instance presented to and instituted against the immediate employer, but the proceedings shall not constitute a waiver of the employee's rights to recover compensation under this chapter from the principal contractor or intermediate contractor; provided, that the collection of full compensation from one (1) employer shall bar recovery by the employee against any others, nor shall the employee collect from all a total compensation in excess of the amount for which any of the contractors is liable.*

*(d) This section applies only in cases where the injury occurred on, in, or about the premises on which the principal contractor has undertaken to execute work or that are otherwise under the principal contractor's control or management.*

*(e) A subcontractor under contract to a general contractor may elect to be covered under any policy of workers' compensation insurance insuring the contractor upon written agreement of the contractor, by filing written notice of the election, on a form prescribed by the administrator, with the division. It is the responsibility of the general contractor to file the written notice with the division. Failure of the general contractor to file the written notice shall not operate to relieve or alter the obligation of an insurance company to provide coverage to a subcontractor when the subcontractor can produce evidence of payment of premiums to the insurance company for the coverage. The election shall in no way terminate or affect the independent contractor status of the subcontractor for any other purpose than to permit workers' compensation coverage. The election of coverage may be terminated by the subcontractor or general contractor by providing written notice of the termination to the division and to all other parties consenting to the prior election. The termination shall be effective thirty (30) days from the date of the notice to all other parties consenting to the prior election and to the division.*

*(f)(1) [Deleted by 2010 amendment.]*

*(2) [Deleted by 2010 amendment.]*

*(3) [Deleted by 2010 amendment.]*

*(4) [Deleted by 2008 amendment.]*

*(g) [Deleted by 2010 amendment.]*

*(h) This section shall not apply to a construction services provider, as defined by § 50-6-901.*

**50-6-115. Extraterritorial application of chapter.**

*(a) For purposes of this section, an employee is considered to be temporarily in a state working for an employer if the employee is working for such*

employee's employer in a state other than the state where such employee is primarily employed for no more than fourteen (14) consecutive days, or no more than twenty-five (25) days total, during a calendar year.

(b)(1) If an employee in this state who is subject to this chapter temporarily leaves this state incidental to the employee's employment and receives an accidental injury arising out of and in the course and scope of the employee's employment, the employee, or the employee's beneficiaries in the case of an injury that results in the employee's death, shall be entitled to the benefits of this chapter as if the employee was injured in this state.

(2) If an employee, while working outside the territorial limits of this state other than temporarily, suffers an injury on account of which the employee, or, in the event of the employee's death, the employee's dependents, would have been entitled to the benefits provided by this chapter had the injury occurred within this state, the employee, or in the event of the employee's death resulting from the injury, the employee's dependents, shall be entitled to the benefits provided by this chapter; provided, that at the time of the injury:

(A) The employment was principally localized within this state;

(B) The contract of hire was made in this state; or

(C) If at the time of the injury the injured worker was a Tennessee resident and there existed a substantial connection between this state and the particular employer and employee relationship.

(c)(1) An employee from another state and the employee's employer are exempt from this chapter while the employee is temporarily in this state performing work for the employer if:

(A) The employer has furnished workers' compensation insurance coverage under the workers' compensation insurance or similar laws of the other state to cover the employee's employment while in this state;

(B) The extraterritorial provisions of this chapter are recognized in the other state; and

(C) Employees and employers who are covered in this state are likewise exempted from the application of the workers' compensation insurance or similar laws of the other state.

(2) The benefits under the workers' compensation insurance or similar laws of the other state, or other remedies under similar law, are the exclusive remedy against the employer for any injury, whether resulting in death or not, received by the employee while temporarily working for that employer in this state.

(3) A certificate from the duly authorized officer of the appropriate department of another state certifying that the employer of such other state is insured in that state and has provided extraterritorial coverage insuring employees while working in this state is prima facie evidence that the employer carries such workers' compensation insurance.

(4) Whenever in any appeal or other litigation the construction of the laws of another jurisdiction is required, the courts shall take judicial notice of such construction of the laws of the other jurisdiction.

(5) When an employee has a claim under the workers' compensation insurance laws of another state, territory, province, or foreign nation for the same injury or occupational disease as the claim filed in this state, the total amount of compensation paid or awarded under such other workers' compensation law shall be credited against the compensation due under this

chapter.

(d)(1) Any employer who is insured in this state for workers' compensation under this chapter, and who has extraterritorial coverage under this chapter, for their employees while such employees are temporarily working outside this state within the meaning of subsection (a) may obtain a certificate evidencing such coverage at the time that the application for certification is made from the commissioner of commerce and insurance.

(2) In order to obtain a certificate under subdivision (d)(1), an employer shall:

(A) File an application with the commissioner of commerce and insurance, on a form that is approved by the commissioner of commerce and insurance;

(B) Pay a filing fee to the department of commerce and insurance in the amount of one hundred dollars (\$100). The commissioner of commerce and insurance may change the amount of the filing fee required by this subdivision (B) by promulgating a rule pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as necessary to ensure that the proceeds of such filing fees are sufficient to offset the cost of processing applications and issuing the certificates authorized by this subsection (d); and

(C) Submit to the commissioner of commerce and insurance a copy of the declaration page from the employer's workers' compensation insurance policy, or such proof as the commissioner of commerce and insurance may require to demonstrate that the employer is self insured for workers' compensation and the territorial limits of such coverage.

(3) The commissioner of commerce and insurance is authorized to issue a certificate that certifies that, at the time that the application for certification is made, the applicant employer in this state is insured for workers' compensation under this chapter, and that such employers have extraterritorial coverage under this chapter, for their employees while such employees are temporarily working outside this state within the meaning of subsection (a).

**50-6-116. Construction of chapter. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

The rule of common law requiring strict construction of statutes in derogation of common law shall not be applicable to this chapter, but this chapter is declared to be a remedial statute, which shall be given an equitable construction by the courts, to the end that the objects and purposes of this chapter may be realized and attained.

**50-6-116. Construction of chapter. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*For any claim for workers' compensation benefits for an injury, as defined in this chapter, when the date of injury is on or after July 1, 2014, this chapter shall not be remedially or liberally construed but shall be construed fairly, impartially, and in accordance with basic principles of statutory construction and this chapter shall not be construed in a manner favoring either the employee or the employer.*

**50-6-117. Suits by corporation officer against employer. [Effective until July 1, 2014.]**

Every employee who is a corporate officer and who elects not to operate under this chapter, in any action to recover damages for personal injury or death by accident brought against an employer who has elected to operate under this chapter, shall proceed as at common law, and the employer in the suit may make use of all common law defenses. This section shall not apply to any officer of a corporation, member of a limited liability company, partner, or sole proprietor who is engaged in the construction industry, as defined by § 50-6-901; instead, part 9 of this chapter shall apply to such officer, member, partner or sole proprietor.

**50-6-118. Penalties. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) The division of workers' compensation shall, by rule promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, establish and collect penalties for the following:

- (1) Failure of a covered employer to provide workers' compensation coverage or qualify as a self-insurer;
- (2) Late filing of accident reports;
- (3) Bad faith denial of claims;
- (4) Late filing of notice of denial of claim;
- (5) Late filing of notice of change in benefit payments;
- (6) Late filing with the department of notice of filing of lawsuits by employees or employee representatives; and
- (7) Late filing of judgments by insurance companies or by employers, if self-insured.

(b) All penalties collected by the department from an employer for failure to provide workers' compensation coverage or failure to qualify as a self-insurer shall be paid into and become a part of the uninsured employers fund. All other penalties collected by the department shall be paid into and become a part of the second injury fund.

(c) The commissioner, commissioner's designee, or an agency member appointed by the commissioner, may assess the penalties authorized by this chapter, upon providing notice and an opportunity for a hearing to an employer, an employee, an insurer, or a self-insured pool or trust. If a hearing is requested, the commissioner, commissioner's designee, or an agency member appointed by the commissioner shall have the authority to hear the matter as a contested case, and the authority to hear the administrative appeal of an agency decision, relating to the assessment of the penalties authorized by this chapter. When a hearing or review of an agency decision is requested, the requesting party shall have the burden of proving, by a preponderance of the evidence, that the penalized party was either not subject to this chapter, or that the penalties assessed pursuant to this chapter should not have been assessed.

**50-6-118. Penalties. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) The division of workers' compensation shall, by rule promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter*

*5, establish and collect penalties for the following:*

- (1) Failure of a covered employer to provide workers' compensation coverage or qualify as a self-insurer;*
- (2) Late filing of accident reports;*
- (3) Bad faith denial of claims;*
- (4) Late filing of notice of denial of claim;*
- (5) [Deleted by 2013 amendment, effective July 1, 2014.]*
- (6) [Deleted by 2013 amendment, effective July 1, 2014.]*
- (7) [Deleted by 2013 amendment, effective July 1, 2014.]*
- (8) Failure of any party to appear or to mediate in good faith at any alternative dispute resolution proceeding;*
- (9) Failure of any party to comply, within the designated timeframe, with any order or judgment issued by a workers' compensation judge;*
- (10) Performance of any enumerated action provided in § 29-9-102 in relation to any proceedings in the court of workers' compensation claims;*
- (11) Failure of any employer to timely provide medical treatment made reasonably necessary by the accident and recommended by the authorized treating physician or operating physician;*
- (12) Failure of an employer to timely provide a panel of physicians that meets the statutory requirements of this chapter;*
- (13) Wrongful failure of an employer to pay an employee's claim for temporary total disability payments;*
- (14) Wrongful failure to satisfy the terms of an approved settlement; and*
- (15) Refusal to cooperate with the services provided by an ombudsman;*

*(b) All penalties collected by the department from an employer for failure to provide workers' compensation coverage or failure to qualify as a self-insurer shall be paid into and become a part of the uninsured employers fund. All other penalties collected by the department shall be paid into and become a part of the second injury fund.*

*(c) The division of workers' compensation may assess the penalties authorized by this chapter, upon providing notice and an opportunity for a hearing to an employer, an employee, an insurer, or a self-insured pool or trust. If a hearing is requested, the commissioner, commissioner's designee, or an agency member appointed by the commissioner shall have the authority to hear the matter as a contested case, and the authority to hear the administrative appeal of an agency decision, relating to the assessment of the penalties authorized by this chapter. When a hearing or review of an agency decision is requested, the requesting party shall have the burden of proving, by a preponderance of the evidence, that the penalized party was either not subject to this chapter, or that the penalties assessed pursuant to this chapter should not have been assessed. Any party assessed a penalty pursuant to this section shall have the right to appeal the penalty assessed by the division and affirmed by the commissioner, the commissioner's designee or an agency member in the manner provided in this subsection, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.*

*(d) If an employee receives a settlement, judgment or decree under this chapter that includes the payment of medical expenses and the employer or workers' compensation carrier wrongfully fails to reimburse an employee for any medical expenses actually paid by the employee within sixty (60) days of the settlement, judgment or decree, or fails to provide reasonable and necessary medical expenses and treatment, including failure to reimburse for reasonable*

*and necessary medical expenses, in bad faith after receiving reasonable notice of their obligation to provide the medical treatment, the employer or workers' compensation carrier shall be liable, in the discretion of the court, to pay the employee, in addition to the amount due for medical expenses paid, a sum not exceeding twenty-five percent (25%) of the expenses; provided, that it is made to appear to the court that the refusal to pay the claim was not in good faith and that the failure to pay inflicted additional expense, loss or injury upon the employee.*

**50-6-121. Advisory council on workers' compensation. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a)(1) There is created an advisory council on workers' compensation. There shall be seven (7) voting members of the council, with three (3) representing employers, three (3) representing employees, and one (1) member who shall serve as the chair and who shall be the state treasurer or the state treasurer's designee. There shall be ten (10) nonvoting members of the council. All members shall have a demonstrable working knowledge of the workers' compensation system.

(A) The chair shall preside at meetings of the council and, in consultation with the voting members of the council, shall supervise the work of the staff of the council. The council shall meet at the call of the chair or at the written call of four (4) voting members of the council which written call shall be delivered to the chair. The chair may vote only on matters related to the administration of the council or the council's research. The chair is not permitted to vote on any matter that constitutes the making of a policy recommendation to the governor or to the general assembly.

(B) The speaker of the house of representatives, the speaker of the senate and the governor shall each appoint one (1) employer and one (1) employee representative to the council, who shall be voting members. Representatives, officers and employees from labor organizations or business trade organizations are eligible for appointment. In making the appointments of the employer representatives, the appointing authorities shall strive to ensure a balance of a commercially insured employer, self-insured employer or an employer who operates a small business. At least one (1) employee representative shall be from organized labor. Proxy voting is prohibited by voting members of the council; provided, however, that in instances where a voting member will be absent from a vote of the council, the member's appointing authority is authorized to appoint an alternate or designee for the vote or votes.

(C) Voting members shall serve four-year terms and the terms shall be staggered so that the terms of only three (3) voting members shall terminate at the same time. The terms of the voting members who are serving as of June 30, 2003, shall be amended as follows: those members whose terms are scheduled to expire in 2004 shall expire on June 30, 2004, and the successors shall serve a four-year term to begin on July 1, 2004, and to end on June 30, 2008, and those members whose terms are scheduled to expire in 2006 shall expire on June 30, 2006, and the successors shall serve a four-year term to begin on July 1, 2006, and to expire on June 30, 2010. Thereafter, all four-year terms shall begin on July 1 and terminate on June 30, four (4) years thereafter.

(D)(i) The governor shall also appoint ten (10) nonvoting members of the council as follows: one (1) to represent local governments, one (1) to represent insurance companies, five (5) to represent health care providers and three (3) attorneys. The nonvoting local government representative may be appointed from lists of qualified persons submitted by interested municipal and county organizations including, but not limited to, the Tennessee Municipal League and the Tennessee County Services Association. The nonvoting insurance company representative may be appointed from lists of qualified persons submitted by interested insurance organizations including, but not limited to, the Alliance of American Insurers and the American Insurance Association. One (1) nonvoting healthcare provider representative may be appointed from lists of qualified persons submitted by interested medical organizations including, but not limited to, the Tennessee Medical Association and one (1) nonvoting healthcare provider representative may be appointed from lists of qualified persons submitted by interested hospital organizations including, but not limited to, the Tennessee Hospital Association. One (1) nonvoting health care provider representative shall be a chiropractor who is licensed in this state, one (1) nonvoting health care provider representative shall be a physical therapist who is licensed in this state, and one (1) nonvoting health care provider representative shall be an occupational therapist who is licensed in this state, and these members shall not receive reimbursement for travel expenses. The nonvoting attorney members shall be appointed as follows: one (1) who shall primarily represent injured workers' compensation claimants, who may be appointed from lists of qualified persons submitted by interested justice organizations including, but not limited to, the Tennessee Association for Justice; one (1) who shall primarily represent employers or workers' compensation insurers, who may be appointed from lists of qualified persons submitted by interested defense lawyer organizations including, but not limited to, the Tennessee Defense Lawyers Association; and one (1) who may be appointed from lists of qualified persons submitted by interested legal organizations including, but not limited to the Tennessee Bar Association.

(ii) The appointing authorities shall consult with interested groups including, but not limited to, the organizations listed in subdivision (a)(D)(i) to determine qualified persons to fill positions on the council.

(E) The nonvoting members shall be appointed to four-year terms that shall begin on July 1 and terminate on June 30, four (4) years thereafter.

(F) The chair of the commerce and labor committee of the senate, the chair of the consumer and human resources committee of the house of representatives, the commissioner of labor and workforce development and the commissioner of commerce and insurance, or their designees, shall be ex officio, nonvoting members of the council.

(2) Each voting and nonvoting member of the advisory council on workers' compensation shall, upon the expiration of the member's term, be eligible for reappointment and shall serve until a successor is appointed. In the event a member resigns or becomes ineligible for service during the member's term, a successor shall be appointed by the appropriate appointing authority to serve the remainder of the term.

(3) No employer shall discriminate in any manner against an employee who serves on the advisory council because of the employee's service.

Employees who serve on the advisory council shall not be denied any benefit from their employer because of the employee's service. Travel expenses of the employee representatives on the council shall be reimbursed pursuant to subsection (b); however, employers may choose to pay the travel expenses of their employees' service on the advisory council according to their own policies.

(b)(1) Notwithstanding the provisions of § 3-6-304 or any other law to the contrary, and in addition to all other requirements for membership on the council:

(A) Any person registered as a lobbyist pursuant to the registration requirements of title 3, chapter 6 who is subsequently appointed or otherwise named as a member of the council shall terminate all employment and business association as a lobbyist with any entity whose business endeavors or professional activities are regulated by the council, prior to serving as a member of the council. The provisions of this subdivision (b)(1)(A) shall apply to all persons appointed or otherwise named to the council after July 1, 2010;

(B) No person who is a member of the council shall be permitted to register or otherwise serve as a lobbyist pursuant to title 3, chapter 6 for any entity whose business endeavors or professional activities are regulated by the council during such person's period of service as a member of the council. The provisions of this subdivision (b)(1)(B) shall apply to all persons appointed or otherwise named to the council after July 1, 2010, and to all persons serving on the council on such date who are not registered as lobbyists; and

(C) No person who serves as a member of the council shall be employed as a lobbyist by any entity whose business endeavors or professional activities are regulated by the council for one (1) year following the date such person's service on the council ends. The provisions of this subdivision (b)(1)(C) shall apply to persons serving on the council as of July 1, 2010, and to persons appointed to the council subsequent to such date.

(2) A person who violates the provisions of this subsection (b) shall be subject to the penalties prescribed in title 3, chapter 6.

(3) The bureau of ethics and campaign finance is authorized to promulgate rules and regulations to effectuate the purposes of this subsection (b). All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and in accordance with the procedure for initiating and proposing rules by the ethics commission to the bureau of ethics and campaign finance as prescribed in § 4-55-103.

(c) In addition to all other requirements for membership on the council, all persons appointed or otherwise named to serve as members of the council after July 1, 2010, shall be residents of this state.

(d) Members of the council shall not be paid but may be reimbursed for travel expenses. All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(e) The council shall meet at least twice each year. It shall annually review workers' compensation in the state and shall issue a report of its findings and conclusions on or before July 1 of each year. The annual report shall be sent to the governor, the speakers of the house of representatives and the senate, the

chair and vice-chair of the special joint committee on workers' compensation, the commissioner of labor and workforce development, the commissioner of commerce and insurance and the clerks of the house of representatives and senate. Notice of the publication of the annual report and all other reports published by the council shall be provided to all members of the general assembly pursuant to § 3-1-114.

(f) In performing its responsibilities, the council's role shall be strictly advisory, but it may:

(1) Make recommendations to the governor, the general assembly, the special joint committee on workers' compensation, the standing committees of each house that review the status of the workers' compensation system, the commissioner of labor and workforce development and the commissioner of commerce and insurance relating to the promulgation or adoption of legislation or rules;

(2) Make recommendations to the commissioner of labor and workforce development and the commissioner of commerce and insurance regarding the method and form of statistical data collections; and

(3) Monitor the performance of the workers' compensation system in the implementation of legislative directives.

(g) The chair, in consultation with the voting members of the council, is authorized to retain staff and professional assistance, such as consultants and actuaries, as the chairman shall deem necessary for the work of the council, subject to budgetary approval in the general appropriations act. For administrative purposes, the council shall be attached to the department of treasury for all administrative matters relating to receipts, disbursements, expense accounts, budget, audit and other related items. The state treasurer shall have administrative and supervisory control over the staff assigned to assist the council. Employees of the council shall not have the status of preferred service employees pursuant to title 8. The autonomy of the council and its authority are not affected by this subsection (g).

(h) The council may develop evaluations, statistical reports and other information from which the general assembly may evaluate the impact of the legislative changes to workers' compensation law, including, but not limited to, the Reform Act of 2004 and subsequent statutory changes to the Workers' Compensation Law.

(i) The advisory council shall issue an annual report that includes a summary of significant supreme court decisions relating to workers' compensation, including an explanation of their impact on existing policy. The report shall be due on or before January 15 of each year and shall include, to the extent possible, the decisions that were issued during the preceding calendar year. This annual report shall be sent to the governor, the speaker of the house of representatives, the speaker of the senate, the chair of the consumer and human resources committee of the house of representatives, the chair of the commerce and labor committee of the senate, and the chair and co-chair of the special joint committee on workers' compensation. Notice of the publication of the report shall be provided to all members of the general assembly pursuant to § 3-1-114.

(j) The advisory council on workers' compensation shall, within ten (10) business days of each meeting it conducts, provide a summary of the meeting and a report of all actions taken and all actions recommended to be taken to each member of the consumer and human resources committee of the house of

representatives and the commerce and labor committee of the senate.

(k) Whenever any bill is introduced in the general assembly proposing to amend this chapter or to make any change in workers' compensation law, or to make any change in the law that may have a financial or other substantive impact on the administration of workers' compensation law, the standing committee to which the bill is referred may refer the bill to the council. The council's review of bills relating to workers' compensation should include, but not be limited to, bills that propose to amend chapters 3, 6, 7, and 9 of this title, and title 56, chapters 5 and 47. All bills referred to the council shall be reported back to the standing committee to which they were assigned as quickly as reasonably possible. Notwithstanding the absence of a report from the council, the standing committee is free to consider the bill at any time. The chair making the referral shall immediately notify the prime sponsors of the referral and the council shall not review and comment on the proposed legislation until the prime sponsors have been notified. The comments of the council shall describe the potential effects of the proposed legislation on the workers' compensation system and its operations and any other information or suggestions that the council may think helpful to the sponsors, the standing committees or the general assembly. The comments of the council may include recommendations for or against passage of the proposed legislation. Other than reporting the recommendations for or against passage of proposed legislation and responding to any questions that the legislators may have, no staff of the advisory council shall lobby or advocate for or against passage of proposed legislation.

(l) The council shall study and report on the occupational health and safety of employment in Tennessee and make recommendations for safe employment education and training and promote the development of employer-sponsored health and safety programs.

**50-6-121. Advisory council on workers' compensation. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a)(1) There is created an advisory council on workers' compensation. There shall be seven (7) voting members of the council, with three (3) representing employers, three (3) representing employees, and one (1) member who shall serve as the chair and who shall be the state treasurer or the state treasurer's designee. There shall be ten (10) nonvoting members of the council. All members shall have a demonstrable working knowledge of the workers' compensation system.*

*(A) The chair shall preside at meetings of the council and, in consultation with the voting members of the council, shall supervise the work of the staff of the council. The council shall meet at the call of the chair or at the written call of four (4) voting members of the council which written call shall be delivered to the chair. The chair may vote only on matters related to the administration of the council or the council's research. The chair is not permitted to vote on any matter that constitutes the making of a policy recommendation to the governor or to the general assembly.*

*(B) The speaker of the house of representatives, the speaker of the senate and the governor shall each appoint one (1) employer and one (1) employee representative to the council, who shall be voting members. Representatives, officers and employees from labor organizations or business trade*

*organizations are eligible for appointment. In making the appointments of the employer representatives, the appointing authorities shall strive to ensure a balance of a commercially insured employer, self-insured employer or an employer who operates a small business. At least one (1) employee representative shall be from organized labor. Proxy voting is prohibited by voting members of the council; provided, however, that in instances where a voting member will be absent from a vote of the council, the member's appointing authority is authorized to appoint an alternate or designee for the vote or votes.*

*(C) Voting members shall serve four-year terms and the terms shall be staggered so that the terms of only three (3) voting members shall terminate at the same time. All four-year terms shall begin on July 1 and terminate on June 30, four (4) years thereafter.*

*(D)(i) The governor shall also appoint ten (10) nonvoting members of the council as follows: one (1) to represent local governments, one (1) to represent insurance companies, five (5) to represent health care providers and three (3) attorneys. The nonvoting local government representative may be appointed from lists of qualified persons submitted by interested municipal and county organizations including, but not limited to, the Tennessee Municipal League and the Tennessee County Services Association. The nonvoting insurance company representative may be appointed from lists of qualified persons submitted by interested insurance organizations including, but not limited to, the Alliance of American Insurers and the American Insurance Association. One (1) nonvoting healthcare provider representative may be appointed from lists of qualified persons submitted by interested medical organizations including, but not limited to, the Tennessee Medical Association and one (1) nonvoting healthcare provider representative may be appointed from lists of qualified persons submitted by interested hospital organizations including, but not limited to, the Tennessee Hospital Association. One (1) nonvoting health care provider representative shall be a chiropractor who is licensed in this state, one (1) nonvoting health care provider representative shall be a physical therapist who is licensed in this state, and one (1) nonvoting health care provider representative shall be an occupational therapist who is licensed in this state, and these members shall not receive reimbursement for travel expenses. The nonvoting attorney members shall be appointed as follows: one (1) who shall primarily represent injured workers' compensation claimants, who may be appointed from lists of qualified persons submitted by interested justice organizations including, but not limited to, the Tennessee Association for Justice; one (1) who shall primarily represent employers or workers' compensation insurers, who may be appointed from lists of qualified persons submitted by interested defense lawyer organizations including, but not limited to, the Tennessee Defense Lawyers Association; and one (1) who may be appointed from lists of qualified persons submitted by interested legal organizations including, but not limited to the Tennessee Bar Association.*

*(ii) The appointing authorities shall consult with interested groups including, but not limited to, the organizations listed in subdivision (a)(D)(i) to determine qualified persons to fill positions on the council.*

*(E) The nonvoting members shall be appointed to four-year terms that*

*shall begin on July 1 and terminate on June 30, four (4) years thereafter.*

*(F) The chair of the commerce and labor committee of the senate, the chair of the consumer and human resources committee of the house of representatives, the administrator of the division of workers' compensation and the commissioner of commerce and insurance, or their designees, shall be ex officio, nonvoting members of the council.*

*(2) Each voting and nonvoting member of the advisory council on workers' compensation shall, upon the expiration of the member's term, be eligible for reappointment and shall serve until a successor is appointed. In the event a member resigns or becomes ineligible for service during the member's term, a successor shall be appointed by the appropriate appointing authority to serve the remainder of the term.*

*(3) No employer shall discriminate in any manner against an employee who serves on the advisory council because of the employee's service. Employees who serve on the advisory council shall not be denied any benefit from their employer because of the employee's service. Travel expenses of the employee representatives on the council shall be reimbursed pursuant to subsection (b); however, employers may choose to pay the travel expenses of their employees' service on the advisory council according to their own policies.*

*(b)(1) Notwithstanding the provisions of § 3-6-304 or any other law to the contrary, and in addition to all other requirements for membership on the council:*

*(A) Any person registered as a lobbyist pursuant to the registration requirements of title 3, chapter 6 who is subsequently appointed or otherwise named as a member of the council shall terminate all employment and business association as a lobbyist with any entity whose business endeavors or professional activities are regulated by the council, prior to serving as a member of the council. The provisions of this subdivision (b)(1)(A) shall apply to all persons appointed or otherwise named to the council after July 1, 2010;*

*(B) No person who is a member of the council shall be permitted to register or otherwise serve as a lobbyist pursuant to title 3, chapter 6 for any entity whose business endeavors or professional activities are regulated by the council during such person's period of service as a member of the council. The provisions of this subdivision (b)(1)(B) shall apply to all persons appointed or otherwise named to the council after July 1, 2010, and to all persons serving on the council on such date who are not registered as lobbyists; and*

*(C) No person who serves as a member of the council shall be employed as a lobbyist by any entity whose business endeavors or professional activities are regulated by the council for one (1) year following the date such person's service on the council ends. The provisions of this subdivision (b)(1)(C) shall apply to persons serving on the council as of July 1, 2010, and to persons appointed to the council subsequent to such date.*

*(2) A person who violates the provisions of this subsection (b) shall be subject to the penalties prescribed in title 3, chapter 6.*

*(3) The bureau of ethics and campaign finance is authorized to promulgate rules and regulations to effectuate the purposes of this subsection (b). All such rules and regulations shall be promulgated in accordance with the Uniform*

*Administrative Procedures Act, compiled in title 4, chapter 5, and in accordance with the procedure for initiating and proposing rules by the ethics commission to the bureau of ethics and campaign finance as prescribed in § 4-55-103.*

*(c) In addition to all other requirements for membership on the council, all persons appointed or otherwise named to serve as members of the council after July 1, 2010, shall be residents of this state.*

*(d) Members of the council shall not be paid but may be reimbursed for travel expenses. All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.*

*(e) The council shall meet at least twice each year. It shall annually review workers' compensation in the state and shall issue a report of its findings and conclusions on or before July 1 of each year. The annual report shall be sent to the governor, the speakers of the house of representatives and the senate, the chair and vice-chair of the special joint committee on workers' compensation, the administrator of the division of workers' compensation, the commissioner of commerce and insurance and the clerks of the house of representatives and senate. Notice of the publication of the annual report and all other reports published by the council shall be provided to all members of the general assembly pursuant to § 3-1-114.*

*(f) In performing its responsibilities, the council's role shall be strictly advisory, but it may:*

*(1) Make recommendations to the governor, the general assembly, the special joint committee on workers' compensation, the standing committees of each house that review the status of the workers' compensation system, the administrator of the division of workers' compensation and the commissioner of commerce and insurance relating to the promulgation or adoption of legislation or rules;*

*(2) Make recommendations to the administrator of the division of workers' compensation and the commissioner of commerce and insurance regarding the method and form of statistical data collections; and*

*(3) Monitor the performance of the workers' compensation system in the implementation of legislative directives.*

*(g) The chair, in consultation with the voting members of the council, is authorized to retain staff and professional assistance, such as consultants and actuaries, as the chairman shall deem necessary for the work of the council, subject to budgetary approval in the general appropriations act. For administrative purposes, the council shall be attached to the department of treasury for all administrative matters relating to receipts, disbursements, expense accounts, budget, audit and other related items. The state treasurer shall have administrative and supervisory control over the staff assigned to assist the council. Employees of the council shall not have the status of preferred service employees pursuant to title 8. The autonomy of the council and its authority are not affected by this subsection (g).*

*(h) The council may develop evaluations, statistical reports and other information from which the general assembly may evaluate the impact of the legislative changes to workers' compensation law, including, but not limited to, the Reform Act of 2004 and subsequent statutory changes to the Workers' Compensation Law.*

*(i) The advisory council shall issue an annual report that includes a*

*summary of significant supreme court decisions relating to workers' compensation, including an explanation of their impact on existing policy. The report shall be due on or before January 15 of each year and shall include, to the extent possible, the decisions that were issued during the preceding calendar year. This annual report shall be sent to the governor, the speaker of the house of representatives, the speaker of the senate, the chair of the consumer and human resources committee of the house of representatives, the chair of the commerce and labor committee of the senate, and the chair and co-chair of the special joint committee on workers' compensation. Notice of the publication of the report shall be provided to all members of the general assembly pursuant to § 3-1-114.*

*(j) The advisory council on workers' compensation shall, within ten (10) business days of each meeting it conducts, provide a summary of the meeting and a report of all actions taken and all actions recommended to be taken to each member of the consumer and human resources committee of the house of representatives and the commerce and labor committee of the senate.*

*(k) Whenever any bill is introduced in the general assembly proposing to amend this chapter or to make any change in workers' compensation law, or to make any change in the law that may have a financial or other substantive impact on the administration of workers' compensation law, the standing committee to which the bill is referred may refer the bill to the council. The council's review of bills relating to workers' compensation should include, but not be limited to, bills that propose to amend chapters 3, 6, 7, and 9 of this title, and title 56, chapters 5 and 47. All bills referred to the council shall be reported back to the standing committee to which they were assigned as quickly as reasonably possible. Notwithstanding the absence of a report from the council, the standing committee is free to consider the bill at any time. The chair making the referral shall immediately notify the prime sponsors of the referral and the council shall not review and comment on the proposed legislation until the prime sponsors have been notified. The comments of the council shall describe the potential effects of the proposed legislation on the workers' compensation system and its operations and any other information or suggestions that the council may think helpful to the sponsors, the standing committees or the general assembly. The comments of the council may include recommendations for or against passage of the proposed legislation. Other than reporting the recommendations for or against passage of proposed legislation and responding to any questions that the legislators may have, no staff of the advisory council shall lobby or advocate for or against passage of proposed legislation.*

*(l) The council shall study and report on the occupational health and safety of employment in Tennessee and make recommendations for safe employment education and training and promote the development of employer-sponsored health and safety programs.*

**50-6-122. Case management and utilization review — Use of HMOs and PPOs — Legislative intent — Claims by health care providers — Collection agencies — Reports to credit bureau. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

*(a)(1) It is the intent of the general assembly that quality medical care services shall be available to injured and disabled employees. It is also the legislative intent to control increasing medical costs in workers' compensa-*

tion matters by establishing cost control mechanisms to ensure cost-effective delivery of medical care services by employing a program of medical case management and a program to review the utilization and quality of medical care services.

(2) In order to assure that in workers' compensation cases quality medical care is rendered and to control medical care costs, an employer is authorized to use, but is not required to use, health maintenance organizations (HMOs) and preferred provider organizations (PPOs). An HMO or PPO may contract with medical care providers as permitted by law. The contracts are authorized to use, but are not limited to the use of, the following managed care methodologies:

- (A) Medical bill review;
- (B) Establishment of medical practice guidelines;
- (C) Case management, subject to § 50-6-123;
- (D) Utilization review, subject to § 50-6-124; and
- (E) Peer review programs.

(3) Section 50-6-204(a)(4), relative to medical care, shall apply to any managed care methodology employed pursuant to this section. For the purposes of § 50-6-204(a)(4), physicians and surgeons in the same HMO or PPO are considered to be associated in practice together if they share a common employer for purposes of their clinical practice, or are associated together in a group practice.

(b) A health care provider shall not pursue a private claim against a workers' compensation claimant for all or part of the costs of health care services provided to the claimant by the provider unless:

(1) The injury is finally adjudicated not to be compensable under this chapter;

(2) The physician or surgeon, as provided in § 50-6-204, who was not authorized by the employer at the time the services were rendered, knew that the physician or surgeon was not an authorized physician or surgeon; or

(3) The employee knew that the physician or surgeon was not an authorized physician or surgeon; provided, that subdivision (b)(2) and this subdivision (b)(3) do not apply to emergency care.

(c) A health care provider shall not employ a collection agency or make a report to a credit bureau concerning a private claim against an employer for all or part of the costs of medical care provided to an employee that are not paid by the employer's workers' compensation insurer without having first exhausted all administrative remedies as provided by § 50-6-226(a)(4). The medical director may include the insurer in the administrative process.

**50-6-122. Case management and utilization review — Use of HMOs and PPOs — Legislative intent — Claims by health care providers — Collection agencies — Reports to credit bureau. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a)(1) It is the intent of the general assembly that quality medical care services shall be available to injured and disabled employees. It is also the legislative intent to control increasing medical costs in workers' compensation matters by establishing cost control mechanisms to ensure cost-effective delivery of medical care services by employing a program of medical case management and a program to review the utilization and quality of medical*

*care services.*

*(2) In order to assure that in workers' compensation cases quality medical care is rendered and to control medical care costs, an employer is authorized to use, but is not required to use, health maintenance organizations (HMOs) and preferred provider organizations (PPOs). An HMO or PPO may contract with medical care providers as permitted by law. The contracts are authorized to use, but are not limited to the use of, the following managed care methodologies:*

- (A) Medical bill review;*
- (B) Establishment of medical practice guidelines;*
- (C) Case management, subject to § 50-6-123;*
- (D) Utilization review, subject to § 50-6-124; and*
- (E) Peer review programs.*

*(3) Section 50-6-204(a)(3), relative to medical care, shall apply to any managed care methodology employed pursuant to this section. For the purposes of § 50-6-204(a)(3), physicians and surgeons in the same HMO or PPO are considered to be associated in practice together if they share a common employer for purposes of their clinical practice, or are associated together in a group practice.*

*(b) A health care provider shall not pursue a private claim against a workers' compensation claimant for all or part of the costs of health care services provided to the claimant by the provider unless:*

*(1) The injury is finally adjudicated not to be compensable under this chapter;*

*(2) The physician or surgeon, as provided in § 50-6-204, who was not authorized by the employer at the time the services were rendered, knew that the physician or surgeon was not an authorized physician or surgeon; or*

*(3) The employee knew that the physician or surgeon was not an authorized physician or surgeon; provided, that subdivision (b)(2) and this subdivision (b)(3) do not apply to emergency care.*

*(c) [Deleted by 2013 amendment, effective July 1, 2014.]*

**50-6-123. Case management system for coordinating medical care services. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

*(a) The commissioner shall establish, pursuant to the commissioner's rule and regulation-making authority, a system of case management for coordinating the medical care services provided to employees claiming benefits under this chapter.*

*(b) Employers may, at their own expense, utilize case management, and, if utilized, the employee shall cooperate with the case management. Case management shall include, but not be limited to:*

*(1) Developing a treatment plan to provide appropriate medical care services to an injured or disabled employee;*

*(2) Systematically monitoring the treatment rendered and the medical progress of the injured or disabled employee;*

*(3) Assessing whether alternate medical care services are appropriate and delivered in a cost-effective manner based on acceptable medical standards;*

*(4) Ensuring that the injured or disabled employee is following the*

prescribed medical care plan; and

(5) Formulating a plan for return to work with due regard for the employee's recovery and restrictions and limitations, if any.

(c) The commissioner may contract with an independent organization, not owned by or affiliated with any carrier authorized to write workers' compensation insurance in the state, to assist with the administration of this section.

(d) Nothing in this section shall prevent an employer from establishing its own program of case management that meets the guidelines promulgated by the commissioner in rules and regulations.

(e) Medical care, treatment, therapy or services provided at the employee's residence pursuant to this chapter, shall not be considered home health services as defined in § 68-11-201 when provided pursuant to direction of the employee's attending physician in the following specific circumstances only:

(1) By a licensed health care provider who routinely provides services to employees at the place of employment, if the services rendered by the provider at the employee's residence are of the same type rendered by the provider at the place of employment; or

(2) By a licensed physical therapist, occupational therapist or speech therapist practicing independently of a home health agency, when the employee's attending physician determines that it is in the best interest of the employee to be treated by the independent therapist because of the therapist's expertise in workplace injuries.

**50-6-123. Case management system for coordinating medical care services. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) The administrator shall establish, pursuant to the administrator's rule and regulation-making authority, a system of case management for coordinating the medical care services provided to employees claiming benefits under this chapter.*

*(b) Employers may, at their own expense, utilize case management, and, if utilized, the employee shall cooperate with the case management. Case management shall include, but not be limited to:*

*(1) Developing a treatment plan to provide appropriate medical care services to an injured or disabled employee;*

*(2) Systematically monitoring the treatment rendered and the medical progress of the injured or disabled employee;*

*(3) Assessing whether alternate medical care services are appropriate and delivered in a cost-effective manner based on acceptable medical standards;*

*(4) Ensuring that the injured or disabled employee is following the prescribed medical care plan; and*

*(5) Formulating a plan for return to work with due regard for the employee's recovery and restrictions and limitations, if any.*

*(c) The administrator may contract with an independent organization, not owned by or affiliated with any carrier authorized to write workers' compensation insurance in the state, to assist with the administration of this section.*

*(d) Nothing in this section shall prevent an employer from establishing its own program of case management that meets the guidelines promulgated by the administrator in rules and regulations.*

*(e) Medical care, treatment, therapy or services provided at the employee's*

*residence pursuant to this chapter, shall not be considered home health services as defined in § 68-11-201 when provided pursuant to direction of the employee's attending physician in the following specific circumstances only:*

*(1) By a licensed health care provider who routinely provides services to employees at the place of employment, if the services rendered by the provider at the employee's residence are of the same type rendered by the provider at the place of employment; or*

*(2) By a licensed physical therapist, occupational therapist or speech therapist practicing independently of a home health agency, when the employee's attending physician determines that it is in the best interest of the employee to be treated by the independent therapist because of the therapist's expertise in workplace injuries.*

**50-6-124. Utilization review system — Pre-admission review — Penalties for rendering excessive or inappropriate services — Chiropractic and physical therapy services — Legislative intent. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) The commissioner of labor and workforce development shall establish a system of utilization review of selected outpatient and inpatient health care providers to employees claiming benefits under this chapter, by providers qualified pursuant to law or the utilization review accreditation commission.

(b) The commissioner shall also establish a system of pre-admission review of all hospital admissions, except for emergency services; however, utilization review pursuant to subsection (a) and this subsection (b) shall begin within one (1) working day of all emergency hospital admissions.

(c) Pursuant to the commissioner's established system of utilization review, the commissioner may contract with an independent utilization review organization, not owned by or affiliated with any carrier authorized to write workers' compensation insurance in the state, to provide utilization review, including peer review.

(d) Nothing in this section shall prevent an employer from electing to provide utilization review; however, if the employee, provider or any other party not contractually bound to the employer's utilization review program disagrees with that employer's utilization review, then that employee, provider or other party shall have recourse to the commissioner's utilization review program, as provided for in this section.

(e) Pursuant to the utilization review conducted by the commissioner, including providing an opportunity for a hearing, any health care provider who is found by the commissioner to have rendered excessive or inappropriate services may be subject to:

(1) A forfeiture of the right to payment for those services that are found to be excessive or inappropriate;

(2) A civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000); or

(3) A temporary or permanent suspension of the right to provide medical care services for workers' compensation claims if the health care provider has established a pattern of violations.

(f) It is the intent of the general assembly to ensure the availability of quality medical care services for injured and disabled employees and to

manage medical costs in workers' compensation matters by eradicating prescription drug abuse through the employment of the system established by subsection (a) to review any healthcare provider prescribing one (1) or more Schedule II, III, or IV controlled substances for pain management to an injured or disabled employee for a period of time exceeding ninety (90) days from the initial prescription of such controlled substances.

**50-6-124. Utilization review system — Pre-admission review — Penalties for rendering excessive or inappropriate services — Chiropractic and physical therapy services — Legislative intent. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) The administrator of the division of workers' compensation shall establish a system of utilization review of selected outpatient and inpatient health care providers to employees claiming benefits under this chapter, by providers qualified pursuant to law or the utilization review accreditation commission.*

*(b) The administrator shall also establish a system of pre-admission review of all hospital admissions, except for emergency services; however, utilization review pursuant to subsection (a) and this subsection (b) shall begin within one (1) working day of all emergency hospital admissions.*

*(c) Pursuant to the administrator's established system of utilization review, the administrator may contract with an independent utilization review organization, not owned by or affiliated with any carrier authorized to write workers' compensation insurance in the state, to provide utilization review, including peer review.*

*(d) Nothing in this section shall prevent an employer from electing to provide utilization review; however, if the employee, provider or any other party not contractually bound to the employer's utilization review program disagrees with that employer's utilization review, then that employee, provider or other party shall have recourse to the administrator's utilization review program, as provided for in this section.*

*(e) Pursuant to the utilization review conducted by the administrator, including providing an opportunity for a hearing, any health care provider who is found by the administrator to have rendered excessive or inappropriate services may be subject to:*

*(1) A forfeiture of the right to payment for those services that are found to be excessive or inappropriate;*

*(2) A civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000); or*

*(3) A temporary or permanent suspension of the right to provide medical care services for workers' compensation claims if the health care provider has established a pattern of violations.*

*(f) It is the intent of the general assembly to ensure the availability of quality medical care services for injured and disabled employees and to manage medical costs in workers' compensation matters by eradicating prescription drug abuse through the employment of the system established by subsection (a) to review any healthcare provider prescribing one (1) or more Schedule II, III, or IV controlled substances for pain management to an injured or disabled employee for a period of time exceeding ninety (90) days from the initial prescription of such controlled substances.*

*(g) In consultation with the administrator's medical advisory committee, the*

*administrator shall, by rules to become effective on January 1, 2016, adopt guidelines for the diagnosis and treatment of commonly occurring workers' compensation injuries.*

*(h) Any treatment that explicitly follows the treatment guidelines adopted by the administrator or is reasonably derived therefrom, including allowances for specific adjustments to treatment, shall have a presumption of medical necessity for utilization review purposes. This presumption shall be rebuttable only by clear and convincing evidence that the treatment erroneously applies the guidelines or that the treatment presents an unwarranted risk to the injured worker.*

*(i) The administrator may assess a reasonable fee, not to exceed two hundred fifty dollars (\$250), for an appeal of any utilization review decision.*

**50-6-125. Medical care and cost containment committee. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) The commissioner shall appoint a medical care and cost containment committee. The committee shall approve regulations pursuant to § 50-6-233(c)(7) before they become effective, assist the commissioner in their implementation, and advise the commissioner, at the commissioner's request, on issues relating to medical care and cost containment in the workers' compensation system.

(b)(1) The committee shall be composed of fifteen (15) voting members appointed by the commissioner as follows:

(A) Three (3) members shall be physicians licensed to practice medicine and surgery under title 63, chapter 6, and shall be appointed from a list of nominees submitted by the Tennessee Medical Association;

(B) Two (2) members shall represent employers and shall be appointed from a list of nominees submitted by the Tennessee Chamber of Commerce and Industry;

(C) One (1) member shall represent employers and shall be appointed from a list of nominees submitted by the Associated Builders and Contractors, Inc.;

(D) Three (3) members shall represent employees and shall be appointed from a list of nominees submitted by the Tennessee AFL-CIO State Labor Council;

(E) Three (3) members shall represent hospitals and shall be appointed from a list of nominees submitted by the Tennessee Hospital Association;

(F) One (1) member shall be a pharmacist and shall be appointed from a list submitted by the Tennessee Pharmacists Association;

(G) One (1) member shall represent the health insurance industry; and

(H) One (1) member shall be a chiropractor and shall be appointed from a list of nominees submitted by the Tennessee Chiropractic Association.

(2) The medical director shall serve as a nonvoting ex officio member of the committee.

(3) An organization that submits a list of nominees shall list at least three (3) nominees for each of the committee positions for which it is requested to submit nominations. If the commissioner finds a list of nominees unsatisfactory, the commissioner shall return the list to the submitting organization. The organization shall submit another list within thirty (30) days. This process shall continue until the commissioner appoints a member. If an

organization that is required to submit a list of nominees fails to do so within thirty (30) days of a request for the list by the commissioner, then the commissioner may appoint a member of the commissioner's own choosing.

(4) In making appointments, the commissioner shall strive to achieve a geographic balance and, in the case of the physician members of the committee, shall assure to the extent possible that the membership of the committee reflects the diversity of specialties involved in the medical treatment and management of workers' compensation claimants.

(c) The members of the committee shall be appointed for terms of four (4) years. Each member of the committee shall, upon the expiration of such member's term, be eligible for reappointment and shall serve until a successor is appointed and qualified.

(d) Members of the committee shall serve without compensation but, when engaged in the conduct of their official duties as members of the committee, shall be entitled to reimbursement for travel expenses in accordance with uniform regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

**50-6-125. Medical payment committee. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a)(1) The administrator shall appoint a medical payment committee. The committee shall hear disputes on medical bill payments between providers and insurers and advise the administrator on issues relating to the medical fee schedule and medical care cost containment in the workers' compensation system. Upon hearing disputes on medical bill payments between providers and insurers, the medical payment committee shall have authority to render a decision on the merits of a dispute. If the medical payment committee determines that a provider or insurer has acted in bad faith in refusing to provide payment for a medical bill or refusing to provide reimbursement for overpayment, the medical payment committee, upon a majority vote, shall refer the malfasant provider or insurer to the division for consideration of assessment of a civil penalty of no more than one thousand dollars (\$1,000) per occurrence. Any provider or insurer aggrieved by the assessment of a penalty under this subsection (a) shall have the right to seek review of the penalty assessment in the manner provided by § 50-6-118(c).*

*(2) The committee shall be comprised of seven (7) voting members appointed by the administrator as follows:*

*(A) Three (3) members shall be representative of the medical provider industry;*

*(B) Three (3) members shall be representative of the workers' compensation insurance industry; and*

*(C) The medical director shall serve as the final member of the committee but shall not cast a vote unless a vote taken by members results in a tie. In that case, the medical director shall cast the deciding vote.*

*(b) In making appointments, the administrator shall strive to achieve a geographic balance and, in the case of the physician members of the committee, shall assure, to the extent possible, that the membership of the committee reflects the diversity of specialties involved in the medical treatment and management of workers' compensation claimants.*

*(c) Members of the committee shall serve without compensation but, when*

*engaged in the conduct of their official duties as members of the committee, shall be entitled to reimbursement for travel expenses in accordance with uniform regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.*

*(d) Each member appointed shall serve a term of four (4) years and may be reappointed by the administrator. If a member leaves the position prior to the expiration of the term, the administrator shall appoint an individual meeting the qualifications of this section to serve the unexpired portion of the term, and the individual may be reappointed by the administrator upon expiration of the term.*

**50-6-126. Medical director. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

The commissioner shall appoint a medical director who shall be the executive secretary and a nonvoting ex officio member of the medical committee. The medical director shall be appointed from a list of three (3) nominees submitted by the Tennessee Medical Association. If the commissioner finds the list of three (3) nominees to be unsatisfactory, then the commissioner shall return the list to the Tennessee Medical Association and the association shall submit another list of nominees. This process shall be repeated, if necessary, until the commissioner selects a nominee to be medical director. The medical director may be a part-time employee, a full-time employee or a contract employee, and shall perform the following functions for which the medical director shall be responsible to the commissioner or medical care and cost containment committee, as appropriate:

(1) Institute administrative procedures that will enable the medical director to evaluate medical care to effect optimal treatment in workers' compensation cases;

(2) Inquire into instances where the medical treatment or the physical rehabilitation provided appears to be deficient or incomplete and recommend corrective action when indicated;

(3) Advise on the disposition of complaints of a physician's failure to furnish adequate medical care as required by this law or by rules and regulations adopted by the administrator, the disposition of complaints concerning other aspects of the medical management of a workers' compensation case or the failure to render required reports, and the disposition of complaints of any affected party as to unreasonable interference with the medical management of a workers' compensation case;

(4) Gather data and maintain records necessary to fulfill the medical director's responsibilities;

(5) Conduct studies and prepare and issue reports on the medical aspect of workers' compensation cases;

(6) Expedite the submission and processing of medical reports necessary to the processing of claims;

(7) Advise health care providers of their rights and responsibilities under this chapter and under any rules or regulations promulgated pursuant to this chapter;

(8) Advise the medical care and cost containment committee as to the reasonableness of fees for medical services in particular cases; and

(9) Undertake other functions that may be delegated to the medical director by the administrator.

**50-6-126. Medical director. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*The administrator shall appoint a medical director who shall be the executive secretary and a nonvoting ex officio member of the medical committee. The medical director shall be appointed from a list of three (3) nominees submitted by the Tennessee Medical Association. If the administrator finds the list of three (3) nominees to be unsatisfactory, then the administrator shall return the list to the Tennessee Medical Association and the association shall submit another list of nominees. This process shall be repeated, if necessary, until the administrator selects a nominee to be medical director. The medical director may be a part-time employee, a full-time employee or a contract employee, and shall perform the following functions for which the medical director shall be responsible to the administrator or medical care and cost containment committee, as appropriate:*

- (1) Institute administrative procedures that will enable the medical director to evaluate medical care to effect optimal treatment in workers' compensation cases;*
- (2) Inquire into instances where the medical treatment or the physical rehabilitation provided appears to be deficient or incomplete and recommend corrective action when indicated;*
- (3) Advise on the disposition of complaints of a physician's failure to furnish adequate medical care as required by this law or by rules and regulations adopted by the administrator; the disposition of complaints concerning other aspects of the medical management of a workers' compensation case or the failure to render required reports, and the disposition of complaints of any affected party as to unreasonable interference with the medical management of a workers' compensation case;*
- (4) Gather data and maintain records necessary to fulfill the medical director's responsibilities;*
- (5) Conduct studies and prepare and issue reports on the medical aspect of workers' compensation cases;*
- (6) Expedite the submission and processing of medical reports necessary to the processing of claims;*
- (7) Advise health care providers of their rights and responsibilities under this chapter and under any rules or regulations promulgated pursuant to this chapter;*
- (8) Advise the medical care and cost containment committee as to the reasonableness of fees for medical services in particular cases; and*
- (9) Undertake other functions that may be delegated to the medical director by the administrator.*

**50-6-127. Public awareness program concerning workers' compensation fraud — Investigations and referrals. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) The commissioner, in consultation with the commissioner of commerce and insurance and appropriate law enforcement officials, shall implement a public awareness program concerning workers' compensation fraud.

(b) The division of workers' compensation shall investigate to determine whether any fraudulent conduct relating to workers' compensation is being practiced, and shall refer to an appropriate law enforcement agency any finding of fraud.

**50-6-127. Public awareness program concerning workers' compensation fraud — Investigations and referrals. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) The administrator, in consultation with the commissioner of commerce and insurance and appropriate law enforcement officials, shall implement a public awareness program concerning workers' compensation fraud.*

*(b) The division of workers' compensation shall investigate to determine whether any fraudulent conduct relating to workers' compensation is being practiced, and shall refer to an appropriate law enforcement agency any finding of fraud.*

**50-6-128. Penalty for employer causing compensable claim to be paid by insurance or failing to provide necessary medical treatment. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

If any employer knowingly, willfully, and intentionally causes a medical or wage loss claim to be paid under health or sickness and accident insurance, or fails to provide reasonable and necessary medical treatment, including a failure to reimburse when the employer knew that the claim arose out of a compensable work-related injury and should have been submitted under its workers' compensation insurance coverage, then a civil penalty of five hundred dollars (\$500) shall be assessed against the employer, and the employer may not offset any sickness and accident income benefit paid to the employee against its temporary total disability benefit payment liability due to the employee pursuant to this chapter. The commissioner of labor and workforce development has the authority to assess and collect the civil penalty.

**50-6-128. Penalty for employer causing compensable claim to be paid by insurance or failing to provide necessary medical treatment. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*If any employer knowingly, willfully, and intentionally causes a medical or wage loss claim to be paid under health or sickness and accident insurance, or fails to provide reasonable and necessary medical treatment, including a failure to reimburse when the employer knew that the claim arose out of a compensable work-related injury and should have been submitted under its workers' compensation insurance coverage, then a civil penalty of five hundred dollars (\$500) shall be assessed against the employer; and the employer may not offset any sickness and accident income benefit paid to the employee against its temporary total disability benefit payment liability due to the employee pursuant to this chapter. The administrator of the division of workers' compensation has the authority to assess and collect the civil penalty.*

**50-6-131. Confidentiality of medical records. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

Medical records provided to the division of workers' compensation in the course of its activities relative to benefit review conferences and the review of settlements pursuant to this chapter shall remain confidential and shall not be considered to be public records.

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**50-6-131. Confidentiality of medical records. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*Medical records provided to the division of workers' compensation in the course of its activities and the review of settlements pursuant to this chapter shall remain confidential and shall not be considered to be public records.*

**50-6-132. Report of employers who fail to provide coverage.**

No later than December 31 of each year, the division of workers' compensation shall produce a report that includes a listing of the name of each covered employer that failed, during the preceding state fiscal year, to provide workers' compensation coverage or qualify as a self-insured employer as required by law. Only those employers whose failure resulted in periods of non-coverage shall be included within the report. The report shall also include the penalty assessed by the division and the payment status of the penalty. The report shall be provided to the advisory council on workers' compensation and the chairs of the commerce and labor committee of the senate and the consumer and human resources committee of the house of representatives.

**50-6-133. Continuing education programs on workers' compensation. [Effective until July 1, 2014.]**

It is the duty of the administrative office of the courts, in consultation with the advisory council on workers' compensation, to develop and provide appropriate continuing education programs on topics related to workers' compensation at each annual meeting. The continuing education shall include both generalized applications of this chapter and the use of the AMA Guides. The program shall also address any specific variances in the application of this chapter throughout the state.

**50-6-134. Annual review. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

The commissioner of commerce and insurance shall, on or before July 1, 2007, and annually thereafter through 2010, review the impact of Acts 2004, ch. 962 on premiums charged by insurers who provide workers' compensation coverage in this state. The commissioner of commerce and insurance is authorized to require the production of any information, documents, books or records from any person who is subject to regulation by the department that the commissioner deems necessary to implement this section.

**50-6-134. Annual review. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*The division shall, on or before July 1, 2015, and annually thereafter, review the impact of the Workers' Compensation Reform Act of 2013 on the workers' compensation system in this state and deliver a report of its findings to each member of the general assembly.*

**50-6-135. Medical advisory committee. [Effective on July 1, 2014.]**

*(a)(1) The administrator shall appoint a medical advisory committee comprised of practitioners in the medical community having experience in the*

*treatment of workers' compensation injuries, representatives of the insurance industry, employer representatives, and employee representatives to assist the administrator in the development of treatment guidelines and advise the administrator on issues relating to medical care in the workers' compensation system.*

*(2) The medical director shall serve as a nonvoting ex-officio member of the committee.*

*(b) In making appointments, the administrator shall strive to achieve a geographic balance and, in the case of the physician members of the committee, shall assure, to the extent possible, that the membership of the committee reflects the diversity of specialties involved in the medical treatment and management of workers' compensation claimants.*

*(c) Members of the committee shall serve without compensation but, when engaged in the conduct of their official duties as members of the committee, shall be entitled to reimbursement for travel expenses in accordance with uniform regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.*

*(d) Each member appointed shall serve a term of four (4) years and may be reappointed by the administrator. If a member leaves the position prior to the expiration of the term, the administrator shall appoint an individual meeting the qualifications of this section to serve the unexpired portion of the term. The individual may be reappointed by the administrator upon expiration of the term.*

**50-6-201. Notice of injury. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) Every injured employee or the injured employee's representative shall, immediately upon the occurrence of an injury, or as soon thereafter as is reasonable and practicable, give or cause to be given to the employer who has no actual notice, written notice of the injury, and the employee shall not be entitled to physician's fees or to any compensation that may have accrued under this chapter, from the date of the accident to the giving of notice, unless it can be shown that the employer had actual knowledge of the accident. No compensation shall be payable under this chapter, unless the written notice is given the employer within thirty (30) days after the occurrence of the accident, unless reasonable excuse for failure to give the notice is made to the satisfaction of the tribunal to which the claim for compensation may be presented.

(b) In those cases where the injuries occur as the result of gradual or cumulative events or trauma, then the injured employee or the injured employee's representative shall provide notice of the injury to the employer within thirty (30) days after the employee:

(1) Knows or reasonably should know that the employee has suffered a work-related injury that has resulted in permanent physical impairment; or

(2) Is rendered unable to continue to perform the employee's normal work activities as the result of the work-related injury and the employee knows or reasonably should know that the injury was caused by work-related activities.

(c) Within thirty (30) calendar days of the notice of injury, the insurer, employer, or self-insured pool or trust shall file with the department, on a form

prescribed by the department, a wage statement detailing the employee's wages for the previous fifty-two (52) weeks, unless the employer stipulates that the maximum weekly workers' compensation rate applies in the particular matter. In the event the insurer, employer, or self-insured pool or trust knowingly and intentionally fails to timely file the wage statement, a workers' compensation specialist may deem the employee's compensation rate to be the maximum workers' compensation rate effective on the date of injury. This subsection (c) shall apply only to accidents that result in death or personal injury of such a nature that the injured person either does not return to the person's employment within seven (7) days after the occurrence of the accident or has a permanent impairment resulting from the accident. If the employer, insurer or self-insured pool fails to file the wage statement within thirty (30) days and the maximum rate is imposed, then the employer, insurer or self-insured pool may file a wage statement at a later time. If the late filed wage statement reflects that the compensation rate is less than the maximum compensation rate, the employer, insurer or self-insured pool may then reduce the compensation rate.

**50-6-201. Notice of injury. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) Every injured employee or the injured employee's representative shall, immediately upon the occurrence of an injury, or as soon thereafter as is reasonable and practicable, give or cause to be given to the employer who has no actual notice, written notice of the injury, and the employee shall not be entitled to physician's fees or to any compensation that may have accrued under this chapter, from the date of the accident to the giving of notice, unless it can be shown that the employer had actual knowledge of the accident. No compensation shall be payable under this chapter, unless the written notice is given the employer within thirty (30) days after the occurrence of the accident, unless reasonable excuse for failure to give the notice is made to the satisfaction of the tribunal to which the claim for compensation may be presented.*

*(1) The notice of the occurrence of an accident by the employee required to be given to the employer shall state in plain and simple language the name and address of the employee and the time, place, nature, and cause of the accident resulting in injury or death. The notice shall be signed by the claimant or by some person authorized to sign on the claimant's behalf, or by any one (1) or more of the claimant's dependents if the accident resulted in death to the employee.*

*(2) No defect or inaccuracy in the notice shall be a bar to compensation, unless the employer can show, to the satisfaction of the workers' compensation judge before which the matter is pending, that the employer was prejudiced by the failure to give the proper notice, and then only to the extent of the prejudice.*

*(3) The notice shall be given personally to the employer or to the employer's agent or agents having charge of the business at which the injury was sustained by the employee.*

*(b) In those cases where the injuries occur as the result of gradual or cumulative events or trauma, then the injured employee or the injured employee's representative shall provide notice of the injury to the employer within thirty (30) days after the employee:*

*(1) Knows or reasonably should know that the employee has suffered a work-related injury that has resulted in permanent physical impairment; or*

*(2) Is rendered unable to continue to perform the employee's normal work activities as the result of the work-related injury and the employee knows or reasonably should know that the injury was caused by work-related activities.*

*(c) [Deleted by 2013 amendment, effective July 1, 2014.]*

**50-6-202. Contents and service of notice. [Effective until July 1, 2014.**

**See the version effective on July 1, 2014.]**

(a)(1) The notice required to be given of the occurrence of an accident to the employer shall state in plain and simple language the name and address of the employee, the time, place, and nature and cause of the accident resulting in injury or death, and shall be signed by the claimant or by some person on the claimant's behalf, or by any one (1) or more of the claimant's dependents if the accident resulted in death to the employee.

(2) No defect or inaccuracy in the notice shall be a bar to compensation, unless the employer can show to the satisfaction of the tribunal in which the matter is pending that the employer was prejudiced by the failure to give the proper notice, and then only to the extent of the prejudice.

(b) The notice shall be given personally to the employer or to the employer's agent or agents having charge of the business in working at which the injury was sustained by the employee.

**50-6-202. Electronic submission and processing of medical bills.**

**[Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) On or after July 1, 2014, the administrator, in cooperation with the commissioner of commerce and insurance, shall adopt rules regarding the electronic submission and processing of medical bills by health care providers to insurance carriers.*

*(b) Insurance carriers shall accept medical bills submitted electronically by health care providers in accordance with the administrator's rules.*

*(c) The administrator shall establish by rule the criteria for granting exceptions to insurance carriers and health care providers who are unable to submit or accept medical bills electronically.*

**50-6-203. Limitation of time, claims and actions. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a)(1) No claim for compensation under this chapter shall be filed with a court having jurisdiction to hear workers' compensation matters, as provided in § 50-6-225, until the parties have exhausted the benefit review conference process provided by the division of workers' compensation.

(2) Notwithstanding this section, if the parties have mutually agreed to a compromise and settlement of a claim for workers' compensation, the parties shall not be required to exhaust the benefit review conference process before filing a claim and submitting the compromise and settlement to the appropriate court for approval pursuant to § 50-6-206(a) or to the commissioner or the commissioner's designee pursuant to § 50-6-206(c). If the settlement is not approved, the parties shall then exhaust the benefit review

conference process.

(b)(1) In those instances where the employer has not paid workers' compensation benefits to or on behalf of the employee, the right to compensation under this chapter shall be forever barred, unless the notice required by § 50-6-202 is given to the employer and a benefit review conference is requested on a form prescribed by the commissioner and filed with the division within one (1) year after the accident resulting in injury.

(2) In those instances where the employer has paid workers' compensation benefits, either voluntarily or as a result of an order to do so, within one (1) year following the accident resulting in injury, the right to compensation is forever barred, unless a form prescribed by the commissioner requesting a benefit review conference is filed with the division within one (1) year from the latter of the date of the last authorized treatment or the time the employer ceased to make payments of compensation to or on behalf of the employee.

(c) For purposes of this section, the issuing date of the last payment of compensation by the employer, not the date of its receipt, shall constitute the time the employer ceased making payments and an employer or its insurer shall provide the date on request.

(d) In case of physical or mental incapacity, other than minority, of the injured person or the injured person's dependents to perform or cause to be performed any action required within the time specified in this section, then the period of limitation in the case shall be extended for one (1) year from the date when the incapacity ceases.

(e)(1) Unless a claim for death benefits is settled or voluntarily paid, the dependent or dependents of a deceased employee shall request a benefit review conference within one (1) year of the date of death of the employee.

(2) In the event the deceased employee was a native of a foreign country and leaves no known dependent or dependents within the United States, it shall be the duty of the commissioner to give written notice forthwith of the death to the duly accredited consular officer of the country of which the beneficiaries are citizens.

(f) In the event the employee fails to appear and participate in the benefit review conference as scheduled by the division, the commissioner shall have the authority to dismiss the employee's claim by sending a copy of the order of dismissal by certified mail with return receipt requested to the employee's last known address. The order of dismissal shall become final and the claim shall be forever barred, unless the employee contacts the department to schedule a benefit review conference and attends a benefit review conference within sixty (60) days of the date the order of dismissal is signed by the commissioner or the commissioner's designee.

(g)(1) If the parties are not able to reach a compromise and settlement of all issues at the benefit review conference held pursuant to this section, the parties shall have ninety (90) days, after the date a written agreement or a written report regarding the conference is filed with the commissioner pursuant to § 50-6-240, to file a complaint with a court of competent jurisdiction as provided in § 50-6-225. The division of workers' compensation shall maintain an official record of the date on which a written agreement or written report is filed with the commissioner and supply the information to the parties or the appropriate court upon request of either the parties or the court.

(2) Notwithstanding subdivision (g)(1), in no event shall an employee have less than the latter of:

(A) One (1) year from the date of the accident resulting in injury; or

(B) One (1) year from the latter of the date of the last authorized treatment or the time the employer ceased to make payments of compensation to or on behalf of the employee in which to file a complaint with a court of competent jurisdiction, as provided in § 50-6-225.

(h) In the event a workers' compensation's complaint is filed with a court of competent jurisdiction pursuant to this section by the employer or the employer's agent and the employer or agent files notice of non-suit of the action, either party shall have ninety (90) days from the date of the order of dismissal to institute an action for recovery of benefits under this chapter.

(i) Proceedings to obtain a judgment in the case of the failure of the employer for thirty (30) days to pay any compensation due under any settlement or determination shall be filed within one (1) year after the default.

**50-6-203. Limitation of time, claims and actions. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) No request for a hearing by a workers' compensation judge under this chapter shall be filed with the court of workers' compensation claims, other than a request for settlement approval, until a workers' compensation mediator has issued a dispute certification notice certifying issues in dispute for hearing before a workers' compensation judge.*

*(b)(1) In instances when the employer has not paid workers' compensation benefits to or on behalf of the employee, the right to compensation under this chapter shall be forever barred, unless the notice required by § 50-6-201 is given to the employer and a petition for benefit determination is filed with the division on a form prescribed by the administrator within one (1) year after the accident resulting in injury.*

*(2) In instances when the employer has voluntarily paid workers' compensation benefits, within one (1) year following the accident resulting in injury, the right to compensation is forever barred, unless a petition for benefit determination is filed with the division on a form prescribed by the administrator within one (1) year from the latter of the date of the last authorized treatment or the time the employer ceased to make payments of compensation to or on behalf of the employee.*

*(c) For purposes of this section, the issuing date of the last payment of compensation by the employer, not the date of its receipt, shall constitute the time the employer ceased making payments and an employer or its insurer shall provide the date on request.*

*(d) In case of physical or mental incapacity, other than minority, of the injured person or the injured person's dependents to perform or cause to be performed any action required within the time specified in this section, then the period of limitation in the case shall be extended for one (1) year from the date when the incapacity ceases.*

*(e)(1) Unless a claim for death benefits is settled or voluntarily paid, the dependent or dependents of a deceased employee shall file a petition for benefit determination on a form prescribed by the administrator within one (1) year after the date of the employee's death.*

*(2) In the event the deceased employee was a native of a foreign country and leaves no known dependent or dependents within the United States, it shall*

*be the duty of the administrator to give written notice forthwith of the death to the duly accredited consular officer of the country of which the beneficiaries are citizens.*

*(f) If the employee fails to appear and participate in alternative dispute resolution as scheduled by the division, a workers' compensation judge shall have the authority to dismiss the employee's claim by sending a copy of the order of dismissal by certified mail with return receipt requested to the employee's last known address. The order of dismissal for failure to participate in alternative dispute resolution shall become final and the claim shall be forever barred, unless the employee contacts the division to schedule mediation and attends mediation within sixty (60) days after the date on which the workers' compensation judge enters the order of dismissal. If the employee complies with the requirements of this subsection within the timeframe provided, the workers' compensation judge shall rescind the order dismissing the employee's claim for failure to participate in alternative dispute resolution.*

*(g) [Deleted by 2013 amendment, effective July 1, 2014.]*

*(h) [Deleted by 2013 amendment, effective July 1, 2014.]*

*(i) Proceedings to obtain a judgment in the case of the failure of the employer for thirty (30) days to pay any compensation due under any settlement or determination shall be filed within one (1) year after the default.*

**50-6-204. Medical treatment, attendance and hospitalization — Release of medical records — Reports — Disputes — Reimbursement or payment of expenses — Burial expenses — Physical examinations — Pain management. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a)(1)(A) The employer or the employer's agent shall furnish, free of charge to the employee, such medical and surgical treatment, medicine, medical and surgical supplies, crutches, artificial members, and other reasonable and necessary apparatus, including prescription eyeglasses and eye wear, such nursing services or psychological services as ordered by the attending physician and hospitalization, including such dental work made reasonably necessary by accident as defined in the chapter.

(B) No medical provider shall charge more than ten dollars (\$10.00) for the first twenty (20) pages or less, and twenty-five cents (25¢) per page for each page after the first twenty (20) pages, for any medical reports, medical records or documents pertaining to medical treatment or hospitalization of the employee that are furnished pursuant to this subsection (a).

(2)(A) It is the intent of the general assembly that the administration of the workers' compensation system proceed in a timely manner and that the parties and the department have reasonable access to the employee's medical records and medical providers that are pertinent to and necessary for the swift resolution of the employee's workers' compensation claim. Notwithstanding any law to the contrary, there shall be no implied covenant of confidentiality, prohibition against ex parte communications or privacy of medical records in the custody of authorized treating physicians with respect to case managers, employers, or insurance companies, or their attorneys, if these persons comply with subdivision (a)(2)(C); provided, however, that the employee, or the employee's attor-

ney, shall be provided copies, no later than ten (10) days in advance of a deposition of the authorized treating physician taken for any purpose or the appearance of the authorized treating physician for testimony, of any and all written memorandum or visual or recorded materials, including e-mails or other written materials:

- (i) Provided to the employee's authorized treating physician by case managers, employers, insurance companies, or their attorneys; or
- (ii) Received from the employee's authorized treating physician.

(B) For purposes of subdivision (a)(2)(C), "employer" means the employer, the employer's attorney, the employer's insurance carrier or third party administrator, a case manager as authorized by § 50-6-123, or any utilization review agent as authorized by § 50-6-124 during the employee's treatment for the claimed workers' compensation injury.

(C) To facilitate the timely resolution of workers' compensation claims and to facilitate the use of the benefit review process established by this chapter, there shall be reasonable access to any employee's medical information only by compliance with the following:

- (i) An employee claiming workers' compensation benefits shall provide the employer or the division of workers' compensation with a signed, written medical authorization form as prescribed by the commissioner; provided, the form shall:

- (a) Be addressed to a specific medical provider authorized by the employer pursuant to this section;

- (b) Permit the release of information through communication, either orally or in writing, as authorized under this subdivision (a)(2)(C); and

- (c) Plainly state in capitalized lettering on the face of the document the following language:

THIS MEDICAL AUTHORIZATION FORM ONLY PERMITS THE EMPLOYER OR THE DIVISION OF WORKERS' COMPENSATION TO OBTAIN MEDICAL INFORMATION THROUGH ORAL OR WRITTEN COMMUNICATION, INCLUDING, BUT NOT LIMITED TO, CHARTS, FILES, RECORDS, AND REPORTS IN THE POSSESSION OF A MEDICAL PROVIDER AUTHORIZED BY THE EMPLOYER PURSUANT TO T.C.A. § 50-6-204 AND A MEDICAL PROVIDER THAT IS REIMBURSED BY THE EMPLOYER FOR THE EMPLOYEE'S TREATMENT;

- (ii) An employee claiming workers' compensation benefits, or the employee's attorney, shall be entitled to obtain medical information, records, opinions, or reports from, or communicate in writing or in person with, any medical provider who has treated or provided medical care to the employee; provided, that the employee executes and provides the medical provider with a properly completed form as described in subdivision (a)(2)(C)(i).

- (iii) Any medical provider authorized by the employer pursuant to this section and who has treated or provided medical care to an employee claiming workers' compensation benefits is permitted to communicate, orally or in writing, with the employer, or the employer's attorney, and shall honor any request by the employer for medical information, medical records, professional opinions, or medical reports pertaining to the claimed workers' compensation injury. Oral communication may be utilized, and includes, but is not limited to, a telephone

conversation or an in-person meeting.

(iv) If an employee or employer files a request for assistance with the department, requesting the department to make a determination as to whether the claim is compensable or concerning an issue related to medical benefits or temporary disability benefits, the department may request, orally or in writing, medical information, records, opinions, or reports from the medical provider; provided, that:

(a) Any response by the medical provider to the department's request shall be in writing; and

(b) If the department receives documents or written responses to any request for information pursuant to this subdivision (a)(2)(C)(iv), then the department shall notify the employee, the employer and any attorney representing the employee or employer within fourteen (14) days of receipt of the document or written response that such persons may review or copy the documents or responses; provided, that the requesting party shall pay the copying fee authorized by subdivision (a)(1)(B) prior to the department providing the requested copies; and

(v) If the department becomes involved in the appeal of a utilization review issue, then the department is authorized to communicate with the medical provider involved in the dispute either orally or in writing to permit the timely resolution of the issue and shall notify the employee, employer or any attorney representing the employee or employer that they may review or copy the documents or responses; provided, that the requesting party shall pay the copying fee authorized by subdivision (a)(1)(B) prior to the department providing the requested copies.

(D) No relevant information developed in connection with authorized medical treatment or an examination provided pursuant to this section for which compensation is sought by the employee shall be considered a privileged communication, and no medical provider shall incur any liability as a result of providing medical information, records, opinions, or reports as described in subdivision (a)(2)(C); provided, that the medical provider complies with subdivision (a)(2)(C).

(3) Whenever it appears that the amount of medical benefits to which the employee may be entitled under this section will exceed the amount of five thousand dollars (\$5,000), the insurer shall file written notice with the division of workers' compensation, which shall, upon receipt of the notice, notify the employer that the claim for medical benefits for the employee will exceed five thousand dollars (\$5,000).

(4)(A) The injured employee shall accept the medical benefits afforded under this section; provided, that, except as provided in subdivision (a)(4)(B) or (a)(4)(C), the employer shall designate a group of three (3) or more reputable physicians or surgeons not associated together in practice, if available in that community, from which the injured employee shall have the privilege of selecting the operating surgeon and the attending physician; and provided, further, that the liability of the employer for the services rendered the employee shall be limited to the charges that are established in the applicable medical fee schedule adopted pursuant to this section.

(B) If the injury is a back injury, then the group of three (3) or more physicians or surgeons required to be designated pursuant to subdivision

(a)(4)(A) shall be expanded to four (4), one (1) of whom must be a doctor of chiropractic; provided, that no more than twelve (12) visits to the doctor of chiropractic shall be approved per back injury, except upon the approval of the employer. The provisions of this subdivision (a)(4)(B) shall not apply to state or local government employees and shall not apply to workers' compensation self-insurer pools established pursuant to § 50-6-405(c)(1).

(C) If the injury or illness requires the treatment of a physician or surgeon who practices orthopedic or neuroscience medicine, then the employer may appoint a panel of physicians or surgeons practicing orthopedic or neuroscience medicine required to be designated pursuant to subdivision (a)(4)(A) consisting of five (5) physicians, with no more than four (4) physicians affiliated in practice.

(D) In circumstances where an employee is offered a treating panel as described in subdivision (a)(4)(C), the injured employee shall be entitled to have a second opinion on the issue of surgery, impairment, and a diagnosis from that same panel of physicians selected by the employer.

(E) The employer shall provide the applicable panel of physicians to the employee in writing on a form prescribed by the division, and the employee shall document in writing the physician the employee has selected and the employee shall sign and date the prescribed form. The employer shall provide a copy of the completed form to the employee and shall maintain a copy of the completed form in the records of the employer and shall produce a copy of the completed form upon request by the division.

(5) All cases of dispute as to the value of the services shall be determined by the tribunal having jurisdiction of the claim of the injured employee for compensation. The tribunal may also deny payment of physicians' fees and hospital charges for failure to submit the reports as required in this section.

(6)(A) When an injured worker is required by the worker's employer to travel to an authorized medical provider or facility located outside a radius of fifteen (15) miles from the insured worker's residence or workplace, then, upon request, the employee shall be reimbursed for reasonable travel expenses. The injured employee's travel reimbursement shall be calculated based on a per mile reimbursement rate, as defined in subdivision (a)(6)(B), times the total round trip mileage as measured from the employee's residence or workplace to the location of the medical provider's facility. The definition of community as contemplated by this subdivision (a)(6)(A) shall apply only for the purposes of this section.

(B) The per mile reimbursement rate for the injured employee shall be no less than the mileage allowance authorized for state employees who have been authorized to use personally owned vehicles in the performance of their duties. This minimum per mile reimbursement rate shall be based on the last published comprehensive travel regulations promulgated by the department of finance and administration.

(b)(1) Where the nature of the injury or occupational disease, as defined in § 50-6-102, is such that it does not disable the employee but reasonably requires medical, surgical, psychological or dental treatment or care, medicine, surgery, dental and psychological treatment, medicine, medical and surgical supplies, crutches, artificial members, and other apparatus shall be furnished by the employer.

(2) In addition to any attorney fees provided for pursuant to § 50-6-226, a court may award attorney fees and reasonable costs to include reasonable

and necessary court reporter expenses and expert witness fees for depositions and trials incurred when the employer fails to furnish appropriate medical, surgical and dental treatment or care, medicine, medical and surgical supplies, crutches, artificial members and other apparatus to an employee provided for pursuant to a settlement or judgment under this chapter.

(c) In case death results from the injury or occupational disease, as defined in § 50-6-102, the employer shall, in addition to the medical services, etc., referred to in subsections (a) and (b), pay the burial expenses of the deceased employee, not exceeding seven thousand five hundred dollars (\$7,500). If the deceased employee leaves no dependents entitled to compensation under this chapter, the employer shall pay to the employee's estate the additional benefits provided in § 50-6-209(b)(2) and (3), and shall also be liable for the medical and hospital services and burial expenses provided for in this section.

(d)(1) The injured employee must submit to examination by the employer's physician at all reasonable times if requested to do so by the employer, but the employee shall have the right to have the employee's own physician present at the examination, in which case the employee shall be liable to the employee's physician for that physician's services.

(2) Any medical report submitted to the employer based upon the examination, or a true copy of the report, shall be furnished by the employer to the employee upon request; provided, that the employer may, in the employer's discretion, furnish the report to the attorney for the employee or to a member of the employee's family.

(3)(A) To provide uniformity and fairness for all parties in determining the degree of anatomical impairment sustained by the employee, a physician, chiropractor or medical practitioner who is permitted to give expert testimony in a Tennessee court of law and who has provided medical treatment to an employee or who has examined or evaluated an employee seeking workers' compensation benefits shall utilize the applicable edition of the AMA Guides as established in § 50-6-102 or, in cases not covered by the AMA Guides, an impairment rating by any appropriate method used and accepted by the medical community.

(B) No anatomical impairment or impairment rating, whether contained in a medical record, medical report, including a medical report pursuant to § 50-6-235(c), deposition or oral expert opinion testimony shall be accepted during a benefit review conference or be admissible into evidence at the trial of a workers' compensation matter unless the impairment is based on the applicable edition of the AMA Guides or, in cases not covered by the AMA Guides, an impairment rating by any appropriate method used and accepted by the medical community.

(C) In the event of a release of a new edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, American Medical Association, other than the edition designated in § 50-6-102(2), the commissioner shall, within six (6) months of the release of the new edition, conduct an evaluation of the new edition and report the commissioner's findings and recommendations to the general assembly. The AMA guides, as defined in § 50-6-102, shall remain in effect until a new edition is designated by the general assembly.

(4) The employer shall pay for the services of the physician making the examination at the instance of the employer.

(5) When a dispute as to the degree of medical impairment exists, either party may request an independent medical examiner from the commissioner's registry. If the parties are unable to mutually agree on the selection of an independent medical examiner from the commissioner's registry, it shall be the responsibility of the employer to provide a written request to the commissioner for assignment of an independent medical examiner with a copy of the notice provided to the other party. Upon receipt of the written request, the commissioner shall provide the names of three (3) independent medical examiners chosen at random from the registry. No physician may serve as an independent medical examiner in a case and serve on any panel of providers selected under this section for the employer involved in such case. The commissioner shall immediately notify the parties by facsimile or e-mail when the list of independent medical examiners has been assigned to a matter, but in any event the notification shall be made within five (5) business days of the date of the request. The employer may strike one (1) name from the list, with the rejection made and communicated to the other party by facsimile or e-mail no later than the third business day after the date on which notification of the list is provided. The employee shall select a physician to perform the independent medical examination from the remaining physicians on the list. All costs and fees for an independent medical examination and report made pursuant to this subdivision (d)(5) shall be paid by the employer. The written opinion as to the permanent impairment rating given by the independent medical examiner pursuant to this subdivision (d)(5) shall be presumed to be the accurate impairment rating; provided, however, that this presumption may be rebutted by clear and convincing evidence to the contrary.

(6) The commissioner shall establish by rule, in accordance with the provisions of the Uniform Administrative Procedures Act, compiled title 4, chapter 5, an independent medical examiners registry. The commissioner shall establish qualifications for the independent medical examiners, including continuing education and peer review requirements, with the advice of the Tennessee Medical Association and the advisory council on workers' compensation, established by § 50-6-121. The rules established shall include, but not be limited to, qualifications and procedures for submission of an application for inclusion on the registry, procedures for the review and maintenance of the registry, and procedures for assignment that ensures that the composition of the panels is random.

(7) Whenever the nature of the injury is such that specialized medical attention is required or indicated and the specialized medical attention is not available in the community in which the injured employee resides, the injured employee can be required to go, at the request of and at the expense of the employer, to the nearest location at which the specialized medical attention is available.

(8) If the injured employee refuses to comply with any reasonable request for examination or to accept the medical or specialized medical services that the employer is required to furnish under this chapter, the injured employee's right to compensation shall be suspended and no compensation shall be due and payable while the injured employee continues to refuse.

(9) For accidents or injuries occurring on or after July 1, 2005, in case of a dispute as to the injury, other than disputes as to the degree of medical impairment, the court may, at the instance of either party or on its own

motion, appoint a neutral physician of good standing and ability to make an examination of the injured person and report the physician's findings to the court, the expense of which examination shall be borne equally by the parties.

(e) In all death claims where the cause of death is obscure or is disputed, any interested party may require an autopsy, the cost of which is to be borne by the party demanding the autopsy.

(f) Any physician whose services are furnished or paid for by the employer and who treats or makes or is present at any examination of an injured employee may be required to testify as to any knowledge acquired by the physician in the course of the treatment or examination as the treatment or examination relates to the injury or disability arising therefrom.

(g)(1) If an emergency, or on account of the employer's failure or refusal to provide the medical care and services required by this law, the injured employee or the injured employee's dependents may provide the medical care and services, and the cost of the medical care and services, not exceeding three hundred dollars (\$300), shall be borne by the employer; provided, that the pecuniary liability of the employer shall be limited to the charges for the service that prevail in the community where the services are rendered.

(2)(A) If an employer denies it is required to provide or refuses to provide medical care and treatment, medical services or medical benefits, or both, that an employee contends should be provided as a result of a judgment or decree entered by a court following a workers' compensation trial or as a result of a workers' compensation settlement agreement approved by a court or by the commissioner or the commissioner's designee pursuant to § 50-6-206, either the employee or the employer, or the attorney for the employee or employer, may request the assistance of a workers' compensation specialist to determine whether such medical care and treatment, medical services or medical benefits, or both, are appropriate by filing with the division a form prescribed for that purpose by the commissioner.

(B) A workers' compensation specialist shall have the authority to determine whether it is appropriate to order the employer or the employer's insurer to provide specific medical care and treatment, medical services or medical benefits, or both, to the employee pursuant to a judgment or decree entered by a court following a workers' compensation trial or pursuant to a workers' compensation settlement agreement approved by a court or by the commissioner or the commissioner's designee pursuant to § 50-6-206. The specialist's authority shall include, but is not limited to, the authority to order specific medical care and treatment, medical services or medical benefits, or both, and any authority granted to a specialist by § 50-6-238(a)(3). The specialist's authority shall also include any authority granted to a court by subdivision (b)(2), to award attorney fees and reasonable costs that include reasonable and necessary court reporter expenses and expert witness fees for depositions.

(C) Upon receipt of the request for assistance, the specialist shall review the available information and then, after such review, enter an order, on a form prescribed by the commissioner, in accord with the following:

(i) If the employer, or the employer's insurer, agrees it will provide medical care and treatment, medical services or medical benefits, or

both, requested by the employee, the specialist shall issue an agreed order specifying the medical care and treatment to be provided by the employer and if the employer fails to comply with the agreed order, the specialist shall enter an order directing the employer or the employer's insurer to provide specific medical care and treatment; and

(ii) If the employer does not agree to provide the medical care and treatment at issue, the specialist shall enter an order as to whether the employer shall provide medical care and treatment, medical services or medical benefits, or both, to the employee, and if so, the specific medical care and treatment, medical services or medical benefits, or both, that shall be provided to the employee.

(D) If either the employee or the employer disagrees with the order entered by the specialist pursuant to subdivision (g)(2)(C)(ii), the following shall apply:

(i) If the request for assistance involved a request for medical care or treatment pursuant to a court judgment or decree following a trial of the underlying workers' compensation claim, then either the employer or the employee may appeal the specialist's order to the original court that issued the judgment or decree. The parties shall attach a copy of the specialist's order to any request for review that is filed in the original court; however, any review by the original court shall be de novo; and

(ii) If the request for assistance involved a request for medical care and treatment pursuant to a settlement approved by a court of competent jurisdiction or by the commissioner or the commissioner's designee pursuant to § 50-6-206, and either the employee or the employer disagrees with the order of the specialist, the aggrieved party may request administrative review pursuant to § 50-6-238(d) and all provisions of § 50-6-238(d) shall apply to the request. If administrative review is not requested, the order of the specialist shall be considered a final order for administrative purposes. If administrative review is requested, the order of the administrator or administrator's designee shall be considered a final order for administrative purposes, if not otherwise stated in the order.

(h) All psychological or psychiatric services available under subdivisions (a)(1) and (b)(1) shall be rendered only by psychologists or psychiatrists and shall be limited to those ordered upon the referral of physicians authorized under subdivision (a)(4).

(i)(1) The commissioner, in consultation with the medical care and cost containment committee and the advisory council on workers' compensation, is authorized to establish by rule, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, a comprehensive medical fee schedule and a related system that includes, but is not limited to, procedures for review of charges, enforcement procedures and appeal hearings to implement the fee schedule. In developing the rules, the commissioner shall strive to assure the delivery of quality medical care in workers' compensation cases and access by injured workers to primary and specialist care while controlling prices and system costs. The medical care fee schedule shall be comprehensive in scope and shall address fees of physicians and surgeons, hospitals, prescription drugs, and ancillary services provided by other health care facilities and providers. The commissioner may consider any and all reimbursement systems and methodologies in developing the fee

schedule, except that, in no event shall the fee schedule set forth differing rates for reimbursement or conversion factors for reimbursement of physical or occupational therapy services based or dependent on whether the services are performed in independently-owned facilities or physician-affiliated facilities, and shall not otherwise consider the physician ownership in the facility providing services. However, differing reimbursement rates may be implemented by the commissioner upon the department's presentation of state data demonstrating there is a need for differing reimbursement rates for physical/occupational therapy services and upon the department's holding a public hearing on the issue.

(2) The commissioner is authorized to retain experts to assist in the development of the fee schedule and related system in accordance with the contracting rules of the department of finance and administration.

(3) The commissioner, in consultation with the medical care and cost containment committee and the advisory council on workers' compensation, shall review the fee schedules adopted pursuant to this section on an annual basis and when appropriate the commissioner shall revise the fee schedules as necessary. It is the intent of the general assembly that this annual review consider, among other factors, the medical consumer price index.

(4)(A) The comprehensive medical fee schedule adopted pursuant to this subsection (i) is not intended to prohibit an employer, trust or pool, or insurer from negotiating lower fees in its own medical fee agreements.

(B) [Deleted by 2010 amendment.]

(C) [Deleted by 2010 amendment.]

(D) [Deleted by 2010 amendment.]

(j)(1) If a treating physician determines that pain is persisting for an injured or disabled employee beyond an expected period for healing, the treating physician may either prescribe, if the physician is a qualified physician as defined in subdivision (j)(2)(B), or refer, such injured or disabled employee for pain management encompassing pharmacological, nonpharmacological and other approaches to manage chronic pain.

(2)(A) In the event that a treating physician refers an injured or disabled employee for pain management, the employee is entitled to a panel of qualified physicians as provided in subdivision (a)(4) except that, in light of the variation in availability of qualified pain management resources across the state, if the office of each qualified physician listed on the panel is located not more than one hundred seventy-five (175) miles from the injured or disabled employee's residence or place of employment, then the community requirement of subdivision (a)(4) shall not apply for the purposes of pain management.

(B) For the purposes of the panel required by subdivision (j)(2)(A), "qualified physician" means an individual licensed to practice medicine or osteopathy in this state and:

(i) Board certified in anesthesiology, neurological surgery, orthopedic surgery, radiology or physical medicine and rehabilitation through the:

(a) American Board of Medical Specialties (ABMS);

(b) American Osteopathic Association (AOA); or

(c) Another organization authorized by the commissioner;

(ii) Board certified by an organization listed in subdivision (j)(2)(B)(i)(a)-(c) in a specialty other than a specialty listed in subdivision (j)(2)(B)(i) and who has completed an ABMS or AOA subspecialty board in pain medicine, or completed an Accreditation Council for Graduate

Medical Education (ACGMA) accredited pain fellowship; or

(iii) Serving as a clinical instructor in pain management at an accredited Tennessee medical training program.

(3) The injured or disabled employee is not entitled to a second opinion on the issue of impairment, diagnosis or prescribed treatment relating to pain management. However, on no more than one (1) occasion, if the injured or disabled employee submits a request in writing to the employer stating that the prescribed pain management fails to meet medically accepted standards, then the employer shall initiate and participate in utilization review as provided in this chapter for the limited purpose of determining whether the prescribed pain management meets medically accepted standards.

(4)(A) As a condition of receiving pain management that requires prescribing Schedule II, III, or IV controlled substances, the injured or disabled employee may sign a formal written agreement with the physician prescribing the Schedule II, III, or IV controlled substances acknowledging the conditions under which the injured or disabled employee may continue to be prescribed Schedule II, III, or IV controlled substances and agreeing to comply with such conditions.

(B) If the injured or disabled employee violates any of the conditions of the agreement on more than one (1) occasion, then:

(i) The employee's right to pain management through the prescription of Schedule II, III, or IV controlled substances under this chapter shall be terminated and the injured or disabled employee shall no longer be entitled under this chapter to the prescription of such substances for the management of pain;

(ii) For injuries occurring on or after July 1, 2012, the violation shall be deemed to be misconduct connected with the employee's employment for purposes of § 50-6-241(d); and

(iii) For injuries occurring on or after July 1, 2012, in the event such violation occurs prior to a finding that the injured or disabled employee is totally disabled as provided in § 50-6-207(4), through either a judgment or decree entered by a court following a workers' compensation trial or a settlement agreement approved pursuant to § 50-6-206, the incapacity to work due to lack of pain management shall not be considered when determining whether the injured employee is entitled to permanent total disability benefits as provided in § 50-6-207(4).

(C) A physician may disclose the employee's violation of the formal written agreement on the physician's own initiative. Upon request of the employer, a physician shall disclose the employee's violation of the formal written agreement as provided in this section.

(D) The formal written agreement shall include a notice to the employee in capitalized, conspicuous lettering on the face of the agreement the consequences for violating the terms of the agreement as provided for in this subsection (j).

(E)(i) If an employer terminates an injured or disabled employee's right under this chapter to pain management through the prescription of Schedule II, III, or IV controlled substances pursuant to alleged violations of the formal agreement as provided in subdivision (j)(4)(B), then the employee may either file a:

(a) Request for assistance pursuant to § 50-6-238, if the benefit review conference requirement has not been exhausted, and a workers' compensation specialist shall determine whether such violations

occurred; or

(b) Petition in a court of proper jurisdiction as provided in § 50-6-225, if the benefit review conference requirement has been exhausted, for a determination of whether such violations occurred.

(ii) If an employer or insurer alleges that an injured or disabled employee is not entitled to reconsideration under § 50-6-241(d) or permanent total disability benefits as provided in § 50-6-207(4) because of the employee's alleged violations of the formal agreement as provided in subdivision (j)(4)(B), then a court shall also determine whether such violations occurred.

(5) Prescribing one (1) or more Schedule II, III, or IV controlled substances for pain management treatment of an injured or disabled employee for a period of time exceeding ninety (90) days from the initial prescription of any such controlled substances is considered to be medical care services for the purposes of utilization review as provided in this chapter. The department is authorized to impose a fee for the administration of an appeal process for utilization review under this subdivision (j)(5) and subdivision (j)(3).

**50-6-204. Medical treatment, attendance and hospitalization — Release of medical records — Reports — Disputes — Reimbursement or payment of expenses — Burial expenses — Physical examinations — Pain management. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

(a)(1)(A) *The employer or the employer's agent shall furnish, free of charge to the employee, such medical and surgical treatment, medicine, medical and surgical supplies, crutches, artificial members, and other reasonable and necessary apparatus, including prescription eyeglasses and eye wear, such nursing services or psychological services as ordered by the attending physician and hospitalization, including such dental work made reasonably necessary by accident as defined in the chapter.*

(B) *No medical provider shall charge more than ten dollars (\$10.00) for the first twenty (20) pages or less, and twenty-five cents (25¢) per page for each page after the first twenty (20) pages, for any medical reports, medical records or documents pertaining to medical treatment or hospitalization of the employee that are furnished pursuant to this subsection (a).*

(2)(A) *It is the intent of the general assembly that the administration of the workers' compensation system proceed in a timely manner and that the parties and the division have reasonable access to the employee's medical records and medical providers that are pertinent to and necessary for the efficient resolution of the employee's workers' compensation claim in a timely manner. To that end, employers or case managers may communicate with the employee's authorized treating physician, orally or in writing, and each medical provider shall be required to release the records of any employee treated for a work-related injury to both the employer and the employee within thirty (30) days after admission or treatment. There shall be no implied covenant of confidentiality with respect to those records, which will include all written memoranda or visual or recorded materials, e-mails and any written materials provided to the employee's authorized treating physician, by case managers, employers, insurance companies, or their attorneys or received from the employee's authorized treating*

physician.

(B) For purposes of subdivision (a)(2), "employer" means the employer, the employer's attorney, the employer's insurance carrier or third party administrator, a case manager as authorized by § 50-6-123, or any utilization review agent as authorized by § 50-6-124 during the employee's treatment for the claimed workers' compensation injury.

(C) If the division becomes involved in the appeal of a utilization review issue, then the division is authorized to communicate with the medical provider involved in the dispute, either orally or in writing, to permit the timely resolution of the issue and shall notify the employee, employer, and any attorney representing the employee or employer that they may review or copy the documents and responses. Each party requesting copies of records shall pay a fee authorized by subdivision (a)(1)(B) prior to the division providing the requested copies.

(D) No relevant information developed in connection with authorized medical treatment or an examination provided pursuant to this section for which compensation is sought by the employee shall be considered a privileged communication, and no medical provider shall incur any liability as a result of providing medical information, records, opinions, or reports as described in subdivision (a)(2)(C); provided, that the medical provider complies with subdivision (a)(2)(C).

(3)(A) The injured employee shall accept the medical benefits afforded under this section; provided that in any case when the employee has suffered an injury and expressed a need for medical care, the employer shall designate a group of three (3) or more independent reputable physicians, surgeons, chiropractors or specialty practice groups if available in the injured employee's community or, if not so available, in accordance with subdivision (a)(3)(B), from which the injured employee shall select one (1) to be the treating physician.

(i) When necessary, the treating physician selected in accordance with this subdivision (a)(3)(A) shall make referrals to a specialist physician, surgeon, or chiropractor and immediately notify the employer. The employer shall be deemed to have accepted the referral, unless the employer, within three (3) business days, provides the employee a panel of three (3) or more independent reputable physicians, surgeons, chiropractors or specialty practice groups. In this case, the employee may choose a specialist physician, surgeon, chiropractor or specialty practice group to provide treatment only from the panel provided by the employer.

(ii) The liability of the employer for the services provided to the employee shall be limited to the maximum allowable fees that are established in the applicable medical fee schedule adopted pursuant to this section.

(iii) The division shall have authority to waive subdivision (a)(3)(A)(ii) when necessary to provide treatment for an injured employee.

(B) If three (3) or more independent reputable physicians, surgeons, chiropractors or specialty practice groups are not available in the employee's community, the employer shall provide a list of three (3) independent reputable physicians, surgeons, chiropractors or specialty practice groups, within a one hundred (100) mile radius of the employee's community.

(C) When the treating physician or chiropractor refers the injured employee, the employee shall be entitled to have a second opinion on the

*issue of surgery and diagnosis from a physician or chiropractor specified in the initial panel of physicians provided by the employer pursuant to subdivision (a)(3)(A). The employee's decision to obtain a second opinion shall not alter the previous selection of the treating physician or chiropractor.*

*(D)(i) The employer shall provide the applicable panel of physicians or chiropractors to the employee in writing on a form prescribed by the division, and the employee shall select a physician or chiropractor from the panel, sign and date the completed form, and return the form to the employer. The employer shall provide a copy of the completed form to the employee and shall maintain a copy of the completed form in the records of the employer and shall produce a copy of the completed form upon request by the division.*

*(ii) In any case when the employee has been presented the physician selection form but has failed to sign the completed form and return it to the employer, the employee's receipt of treatment from any physician provided in the panel after the date the panel was provided shall constitute acceptance of the panel and selection of the physician from whom the employee received treatment as the treating physician, specialist physician, chiropractor or surgeon.*

*(E) In all cases where the treating physician has referred the employee to a specialist physician, surgeon, chiropractor or specialty practice group, the specialist physician, surgeon, or chiropractor to which the employee has been referred, or selected by the employee from a panel provided by the employer, shall become the treating physician until treatment by the specialist physician, surgeon, or chiropractor concludes and the employee has been referred back to the treating physician selected by the employee from the initial panel provided by the employer under subdivision (a)(3)(A).*

*(F) In all cases when an employee changes his or her community of residence after selection of a physician under this subdivision (a)(3), the employer shall provide the employee, upon written request, a new panel of reputable physicians, surgeons, chiropractors or specialty practice groups, as provided in subdivision (a)(3)(A), from which the injured employee shall select one (1) to be the treating physician.*

*(G) If any physician, surgeon, chiropractor or specialty practice group included on a panel provided to an employee under this subsection declines to accept the employee as a patient for the purpose of providing treatment to the employee for his workers' compensation injury, the employee may either select a physician from the remaining physicians, surgeons or chiropractors included on the initial panel provided to the employee pursuant to subdivision (a)(3)(A) or request that the employer provide an additional choice of a physician, surgeon, chiropractor or specialty practice group to replace the physician, surgeon or chiropractor who refused to accept the injured employee as a patient for the purpose of treating his or her workers' compensation injury.*

*(H) Any treatment recommended by a physician or chiropractor selected pursuant to this subdivision (a)(3) or by referral, if applicable, shall be presumed to be medically necessary for treatment of the injured employee.*

*(I) Following the adoption of treatment guidelines pursuant to § 50-6-124, the presumption of medical necessity for treatment recommended by a physician or chiropractor selected pursuant to this subsection or by*

*referral, if applicable, shall be rebuttable only by clear and convincing evidence demonstrating that the recommended treatment substantially deviates from, or presents an unreasonable interpretation of, the treatment guidelines.*

*(4) [Deleted by 2013 amendment, effective July 1, 2014.]*

*(5) [Deleted by 2013 amendment, effective July 1, 2014.]*

*(6)(A) When an injured worker is required by the worker's employer to travel to an authorized medical provider or facility located outside a radius of fifteen (15) miles from the insured worker's residence or workplace, then, upon request, the employee shall be reimbursed for reasonable travel expenses. The injured employee's travel reimbursement shall be calculated based on a per mile reimbursement rate, as defined in subdivision (a)(6)(B), times the total round trip mileage as measured from the employee's residence or workplace to the location of the medical provider's facility. The definition of community as contemplated by this subdivision (a)(6)(A) shall apply only for the purposes of this section.*

*(B) The per mile reimbursement rate for the injured employee shall be no less than the mileage allowance authorized for state employees who have been authorized to use personally owned vehicles in the performance of their duties. This minimum per mile reimbursement rate shall be based on the last published comprehensive travel regulations promulgated by the department of finance and administration.*

*(b)(1) Where the nature of the injury or occupational disease, as defined in § 50-6-102, is such that it does not disable the employee but reasonably requires medical, surgical, psychological or dental treatment or care, medicine, surgery, dental and psychological treatment, medicine, medical and surgical supplies, crutches, artificial members, and other apparatus shall be furnished by the employer.*

*(2) [Deleted by 2013 amendment, effective July 1, 2014.]*

*(c) In case death results from the injury or occupational disease, as defined in § 50-6-102, the employer shall, in addition to the medical services, etc., referred to in subsections (a) and (b), pay the burial expenses of the deceased employee, not exceeding seven thousand five hundred dollars (\$7,500). If the deceased employee leaves no dependents entitled to compensation under this chapter, the employer shall pay to the employee's estate the additional benefits provided in § 50-6-209(b)(2) and (3), and shall also be liable for the medical and hospital services and burial expenses provided for in this section.*

*(d)(1) The injured employee must submit to examination by the employer's physician at all reasonable times if requested to do so by the employer, but the employee shall have the right to have the employee's own physician present at the examination, in which case the employee shall be liable to the employee's physician for that physician's services.*

*(2) Any medical report submitted to the employer based upon the examination, or a true copy of the report, shall be furnished by the employer to the employee upon request; provided, that the employer may, in the employer's discretion, furnish the report to the attorney for the employee or to a member of the employee's family.*

*(3) [Deleted by 2013 amendment, effective July 1, 2014.]*

*(4) The employer shall pay for the services of the physician making the examination at the instance of the employer.*

*(5) When a dispute as to the degree of medical impairment exists, either party may request an independent medical examiner from the administra-*

*tor's registry. If the parties are unable to mutually agree on the selection of an independent medical examiner from the administrator's registry, it shall be the responsibility of the employer to provide a written request to the administrator for assignment of an independent medical examiner with a copy of the notice provided to the other party. Upon receipt of the written request, the administrator shall provide the names of three (3) independent medical examiners chosen at random from the registry. No physician may serve as an independent medical examiner in a case and serve on any panel of providers selected under this section for the employer involved in such case. The administrator shall immediately notify the parties by facsimile or e-mail when the list of independent medical examiners has been assigned to a matter, but in any event the notification shall be made within five (5) business days of the date of the request. The employer may strike one (1) name from the list, with the rejection made and communicated to the other party by facsimile or e-mail no later than the third business day after the date on which notification of the list is provided. The employee shall select a physician to perform the independent medical examination from the remaining physicians on the list. All costs and fees for an independent medical examination and report made pursuant to this subdivision (d)(5) shall be paid by the employer. The written opinion as to the permanent impairment rating given by the independent medical examiner pursuant to this subdivision (d)(5) shall be presumed to be the accurate impairment rating; provided, however, that this presumption may be rebutted by clear and convincing evidence to the contrary.*

*(6) The administrator shall establish by rule, in accordance with the Uniform Administrative Procedures Act, compiled title 4, chapter 5, an independent medical examiners registry. The administrator shall establish qualifications for the independent medical examiners, including continuing education and peer review requirements, with the advice of the Tennessee Medical Association and the advisory council on workers' compensation, established by § 50-6-121. The rules established shall include, but not be limited to, qualifications and procedures for submission of an application for inclusion on the registry, procedures for the review and maintenance of the registry, and procedures for assignment that ensures that the composition of the panels is random.*

*(7) Whenever the nature of the injury is such that specialized medical attention is required or indicated and the specialized medical attention is not available in the community in which the injured employee resides, the injured employee can be required to go, at the request of and at the expense of the employer, to the nearest location at which the specialized medical attention is available.*

*(8) If the injured employee refuses to comply with any reasonable request for examination or to accept the medical or specialized medical services that the employer is required to furnish under this chapter, the injured employee's right to compensation shall be suspended and no compensation shall be due and payable while the injured employee continues to refuse.*

*(9) For accidents or injuries occurring on or after July 1, 2005, in case of a dispute as to the injury, other than disputes as to the degree of medical impairment, the court may, at the instance of either party or on its own motion, appoint a neutral physician of good standing and ability to make an examination of the injured person and report the physician's findings to the*

*court, the expense of which examination shall be borne equally by the parties.*

*(e) In all death claims where the cause of death is obscure or is disputed, any interested party may require an autopsy, the cost of which is to be borne by the party demanding the autopsy.*

*(f) Any physician whose services are furnished or paid for by the employer and who treats or makes or is present at any examination of an injured employee may be required to testify as to any knowledge acquired by the physician in the course of the treatment or examination as the treatment or examination relates to the injury or disability arising therefrom.*

*(g)(1) If an emergency, or on account of the employer's failure or refusal to provide the medical care and services required by this law, the injured employee or the injured employee's dependents may provide the medical care and services, and the cost of the medical care and services, not exceeding three hundred dollars (\$300), shall be borne by the employer; provided, that the pecuniary liability of the employer shall be limited to the charges for the service that prevail in the community where the services are rendered.*

*(2)(A) If an employer does not provide medical care and treatment, medical services or medical benefits, or both, that an employee contends should be provided as a result of a judgment or decree entered by a workers' compensation judge following a workers' compensation trial or as a result of a workers' compensation settlement agreement, either the employee or the employer, or the attorney for the employee or employer, shall request the assistance of a workers' compensation mediator to determine whether such medical care and treatment, medical services or medical benefits, or both, are appropriate by filing a petition for benefit determination and participating in alternative dispute resolution as provided in § 50-6-236. If the parties do not resolve the dispute by agreement, either party may file a request for a hearing and submit the dispute to a workers' compensation judge for resolution after the workers' compensation mediator has issued a dispute certification notice in accordance with § 50-6-236.*

*(B) A workers' compensation judge shall have the authority to determine whether it is appropriate to order the employer or the employer's insurer to provide specific medical care and treatment, medical services or medical benefits, or both, to the employee pursuant to a judgment or decree entered by a judge following a workers' compensation trial or pursuant to a workers' compensation settlement agreement approved by a workers' compensation judge pursuant to § 50-6-240. The workers' compensation judge's authority shall include, but is not limited to, the authority to order specific medical care and treatment, medical services or medical benefits, or both. The authority of a workers' compensation judge to order the provision of benefits under this section shall include authority to order specific medical care and treatment, medical services or medical benefits, or both for all settlements approved by the department, the division, the commissioner, the commissioner's designee or a workers' compensation specialist even if the settlement was approved under prior law.*

*(h) All psychological or psychiatric services available under subdivisions (a)(1) and (b)(1) shall be rendered only by psychologists or psychiatrists and shall be limited to those ordered upon the referral of physicians authorized under subdivision (a)(4).*

*(i)(1) The administrator, in consultation with the medical care and cost containment committee and the advisory council on workers' compensation,*

*is authorized to establish by rule, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, a comprehensive medical fee schedule and a related system that includes, but is not limited to, procedures for review of charges, enforcement procedures and appeal hearings to implement the fee schedule. In developing the rules, the administrator shall strive to assure the delivery of quality medical care in workers' compensation cases and access by injured workers to primary and specialist care while controlling prices and system costs. The medical care fee schedule shall be comprehensive in scope and shall address fees of physicians and surgeons, hospitals, prescription drugs, and ancillary services provided by other health care facilities and providers. The administrator may consider any and all reimbursement systems and methodologies in developing the fee schedule, except that, in no event shall the fee schedule set forth differing rates for reimbursement or conversion factors for reimbursement of physical or occupational therapy services based or dependent on whether the services are performed in independently-owned facilities or physician-affiliated facilities, and shall not otherwise consider the physician ownership in the facility providing services. However, differing reimbursement rates may be implemented by the administrator upon the department's presentation of state data demonstrating there is a need for differing reimbursement rates for physical / occupational therapy services and upon the department's holding a public hearing on the issue.*

*(2) The administrator is authorized to retain experts to assist in the development of the fee schedule and related system in accordance with the contracting rules of the department of finance and administration.*

*(3) The administrator, in consultation with the medical care and cost containment committee and the advisory council on workers' compensation, shall review the fee schedules adopted pursuant to this section on an annual basis and when appropriate the administrator shall revise the fee schedules as necessary. It is the intent of the general assembly that this annual review consider, among other factors, the medical consumer price index.*

*(4)(A) The comprehensive medical fee schedule adopted pursuant to this subsection (i) is not intended to prohibit an employer, trust or pool, or insurer from negotiating lower fees in its own medical fee agreements.*

*(B) [Deleted by 2010 amendment.]*

*(C) [Deleted by 2010 amendment.]*

*(D) [Deleted by 2010 amendment.]*

*(j)(1) If a treating physician determines that pain is persisting for an injured or disabled employee beyond an expected period for healing, the treating physician may either prescribe, if the physician is a qualified physician as defined in subdivision (j)(2)(B), or refer, such injured or disabled employee for pain management encompassing pharmacological, nonpharmacological and other approaches to manage chronic pain.*

*(2)(A) In the event that a treating physician refers an injured or disabled employee for pain management, the employee is entitled to a panel of qualified physicians as provided in subdivision (a)(4) except that, in light of the variation in availability of qualified pain management resources across the state, if the office of each qualified physician listed on the panel is located not more than one hundred seventy-five (175) miles from the injured or disabled employee's residence or place of employment, then the community requirement of subdivision (a)(4) shall not apply for the*

*purposes of pain management.*

*(B) For the purposes of the panel required by subdivision (j)(2)(A), “qualified physician” means an individual licensed to practice medicine or osteopathy in this state and:*

*(i) Board certified in anesthesiology, neurological surgery, orthopedic surgery, radiology or physical medicine and rehabilitation through the:*

*(a) American Board of Medical Specialties (ABMS);*

*(b) American Osteopathic Association (AOA); or*

*(c) Another organization authorized by the administrator;*

*(ii) Board certified by an organization listed in subdivision (j)(2)(B)(i)(a)-(c) in a specialty other than a specialty listed in subdivision (j)(2)(B)(i) and who has completed an ABMS or AOA subspecialty board in pain medicine, or completed an Accreditation Council for Graduate Medical Education (ACGMA) accredited pain fellowship; or*

*(iii) Serving as a clinical instructor in pain management at an accredited Tennessee medical training program.*

*(3) The injured or disabled employee is not entitled to a second opinion on the issue of impairment, diagnosis or prescribed treatment relating to pain management. However, on no more than one (1) occasion, if the injured or disabled employee submits a request in writing to the employer stating that the prescribed pain management fails to meet medically accepted standards, then the employer shall initiate and participate in utilization review as provided in this chapter for the limited purpose of determining whether the prescribed pain management meets medically accepted standards.*

*(4)(A) As a condition of receiving pain management that requires prescribing Schedule II, III, or IV controlled substances, the injured or disabled employee may sign a formal written agreement with the physician prescribing the Schedule II, III, or IV controlled substances acknowledging the conditions under which the injured or disabled employee may continue to be prescribed Schedule II, III, or IV controlled substances and agreeing to comply with such conditions.*

*(B) If the injured or disabled employee violates any of the conditions of the agreement on more than one (1) occasion, then:*

*(i) The employee’s right to pain management through the prescription of Schedule II, III, or IV controlled substances under this chapter shall be terminated and the injured or disabled employee shall no longer be entitled under this chapter to the prescription of such substances for the management of pain;*

*(ii) For injuries occurring on or after July 1, 2012, the violation shall be deemed to be misconduct connected with the employee’s employment for purposes of § 50-6-241(d); and*

*(iii) For injuries occurring on or after July 1, 2012, in the event such violation occurs prior to a finding that the injured or disabled employee is totally disabled as provided in § 50-6-207(4), through either a judgment or decree entered by a court following a workers’ compensation trial or a settlement agreement approved pursuant to § 50-6-206, the incapacity to work due to lack of pain management shall not be considered when determining whether the injured employee is entitled to permanent total disability benefits as provided in § 50-6-207(4).*

*(C) A physician may disclose the employee’s violation of the formal written agreement on the physician’s own initiative. Upon request of the employer, a physician shall disclose the employee’s violation of the formal*

*written agreement as provided in this section.*

*(D) The formal written agreement shall include a notice to the employee in capital letters, conspicuous lettering on the face of the agreement the consequences for violating the terms of the agreement as provided for in this subsection (j).*

*(E)(i) If an employer terminates an injured or disabled employee's right under this chapter to pain management through the prescription of Schedule II, III, or IV controlled substances pursuant to alleged violations of the formal agreement as provided in subdivision (j)(4)(B), then the employee may file a petition for benefit determination.*

*(ii) If an employer or insurer alleges that an injured or disabled employee is not entitled to reconsideration under § 50-6-241(d) or permanent total disability benefits as provided in § 50-6-207(4) because of the employee's alleged violations of the formal agreement as provided in subdivision (j)(4)(B), then a court shall also determine whether such violations occurred.*

*(5) Prescribing one (1) or more Schedule II, III, or IV controlled substances for pain management treatment of an injured or disabled employee for a period of time exceeding ninety (90) days from the initial prescription of any such controlled substances is considered to be medical care services for the purposes of utilization review as provided in this chapter. The department is authorized to impose a fee for the administration of an appeal process for utilization review under this subdivision (j)(5) and subdivision (j)(3).*

*(k) All permanent impairment ratings shall be assigned by the treating physician or chiropractor.*

*(1) The treating physician or chiropractor shall utilize the applicable edition of the AMA guides as established by this chapter.*

*(A) The medical advisory committee shall, within six (6) months of the release of a new edition, conduct an evaluation of the new edition, report the committee's findings to the administrator and recommend to the administrator whether the new edition should be designated for application to the provisions of this chapter. The administrator shall report the committee's findings and recommendation to the general assembly. The AMA guides, as defined in § 50-6-102, shall remain in effect until a new edition is designated by the general assembly.*

*(B) No impairment rating, whether contained in a medical record, medical report, including a medical report pursuant to § 50-6-235(c), deposition, or oral expert opinion testimony shall be accepted during alternative dispute resolution proceedings or be admissible into evidence at the trial of a workers' compensation claim unless the impairment rating is based on the applicable edition of the AMA guides or, in cases not covered by the AMA guides, an impairment rating by any appropriate method used and accepted by the medical community.*

*(2) The treating physician or chiropractor shall assign impairment ratings as a percentage of the body as a whole and shall not consider complaints of pain in calculating the degree of impairment, notwithstanding allowances for pain provided by the applicable edition of the AMA guides as established by this chapter.*

*(3) The treating physician or chiropractor shall evaluate the employee for purposes of assigning an impairment rating and the employee shall attend the evaluation. An employee who fails to attend a scheduled evaluation without justifiable cause shall be subject to sanctions up to and including*

*dismissal of the employee's claim for workers' compensation benefits.*

*(4) Scheduling of the evaluation shall occur within time limits and according to procedures promulgated by the administrator by rule.*

*(5) The treating physician or chiropractor shall complete the evaluation and submit an impairment rating report, on a form prescribed by the administrator, within time limits imposed by the administrator through the promulgation of rules.*

*(6) The treating physician's or chiropractor's written opinion of the injured employee's permanent impairment rating shall be presumed to be the accurate impairment rating. This presumption shall be rebuttable by the presentation of contrary evidence that satisfies a preponderance of the evidence standard.*

**50-6-205. Period of compensation — Maximum amount — Notice of payment, change or nonpayment — Records — Notice of controversy. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) No compensation shall be allowed for the first seven (7) days of disability resulting from the injury, excluding the day of injury, except the benefits provided for in § 50-6-204, but if disability extends beyond that period, compensation shall commence with the eighth day after the injury. In the event, however, that the disability from the injury exists for a period as long as fourteen (14) days, then compensation shall be allowed beginning with the first day after the injury.

(b)(1) The total amount of compensation payable under this part shall not exceed the maximum total benefit, as that benefit is defined in § 50-6-102, in any case, exclusive of travel reimbursement, medical, hospital and funeral benefits.

(2) Compensation shall be paid promptly. The first payment shall be due and payable within fifteen (15) days after the employer has knowledge of any disability or death, and thereafter compensation shall be paid to the employee or the employee's dependents semimonthly. Evidence of the initiation or denial of the compensation is inadmissible in a subsequent proceeding concerning the issue of the compensability of injury.

(3)(A) In addition to any other penalty provided by law, if an employer, trust or pool or an employer's insurer fails to pay, or untimely pays, temporary disability benefits within twenty (20) days after the employer has knowledge of any disability that would qualify for benefits under this chapter, a workers' compensation specialist shall have the authority to assess against the employer, trust or pool or the employer's insurer a civil penalty in addition to the temporary disability benefits that are due to the employee. The penalty, if assessed, shall be in an amount equal to twenty-five percent (25%) of the temporary disability benefits that were not paid in accordance with this subsection (b). Furthermore, the penalty may be assessed as to all temporary disability benefits that are determined not to be paid in compliance with this subsection (b).

(B) Prior to the assessment of any civil penalty, the specialist shall issue a written request to the employer or insurance carrier to provide documentation as to why the civil penalty should not be assessed.

(C) If the specialist determines the employer or insurer was not in compliance with this subsection (b), the specialist shall issue a written

order that assesses the penalty in a specific dollar amount to be paid directly to the employee. If the employer or insurer fails to comply with the order within fifteen (15) calendar days of that order's becoming final, the employer or insurer shall be subject to penalties as set forth in § 50-6-238(d).

(D) In any civil action filed pursuant to this chapter, the court shall have the authority to assess penalties as provided in this subdivision (b)(3).

(c)(1) Upon making the first payment of benefits, and upon stopping or changing the benefits for any cause other than final settlement, or upon denying a claim after proper investigation, the employer's insurance carrier or the employer, if self-insured, shall immediately notify the administrator, on a form prescribed by the administrator, that the payment of income benefits has begun or has been stopped or changed.

(2) Failure to file the notice shall be a misdemeanor and shall, upon conviction, be punishable by a fine of not more than fifty dollars (\$50.00).

(d)(1) If payments have been made without an award, and the employer subsequently elects to controvert the employer's liability, notice of controversy shall be filed with the administrator within fifteen (15) days of the due date of the first omitted payment.

(2) In such cases, the prior payment of compensation shall not be considered a binding determination of the obligations of the employer as to future compensation payments.

(3) Likewise, the acceptance of compensation by the employee shall not be considered a binding determination of the obligations of the employer as to future compensation payments; nor shall the acceptance of compensation by the employee be considered a binding determination of the employee's rights.

**50-6-205. Period of compensation — Maximum amount — Notice of payment, change or nonpayment — Records — Notice of controversy. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) No compensation shall be allowed for the first seven (7) days of disability resulting from the injury, excluding the day of injury, except the benefits provided for in § 50-6-204, but if disability extends beyond that period, compensation shall commence with the eighth day after the injury. In the event, however, that the disability from the injury exists for a period as long as fourteen (14) days, then compensation shall be allowed beginning with the first day after the injury.*

*(b)(1) The total amount of compensation payable under this part shall not exceed the maximum total benefit, as that benefit is defined in § 50-6-102, in any case, exclusive of travel reimbursement, medical, hospital and funeral benefits.*

*(2) Compensation shall be paid promptly. The first payment shall be due and payable within fifteen (15) days after the employer has knowledge of any disability or death, and thereafter compensation shall be paid to the employee or the employee's dependents semimonthly. Evidence of the initiation or denial of the compensation is inadmissible in a subsequent proceeding concerning the issue of the compensability of injury.*

(3)(A) *In addition to any other penalty provided by law, if an employer, trust or pool or an employer's insurer fails to pay, or untimely pays, temporary disability benefits within twenty (20) days after the employer has knowledge of any disability that would qualify for benefits under this chapter, a workers' compensation judge shall have the authority to assess against the employer, trust or pool or the employer's insurer a civil penalty in addition to the temporary disability benefits that are due to the employee. The penalty, if assessed, shall be in an amount equal to twenty-five percent (25%) of the temporary disability benefits that were not paid in accordance with this subsection (b). Furthermore, the penalty may be assessed as to all temporary disability benefits that are determined not to be paid in compliance with this subsection (b).*

(B) *Prior to the assessment of any civil penalty, the judge shall issue a written request to the employer or insurance carrier to provide documentation as to why the civil penalty should not be assessed.*

(C) *If the judge determines the employer or insurer was not in compliance with this subsection (b), the judge shall issue a written order that assesses the penalty in a specific dollar amount to be paid directly to the employee. If the employer or insurer fails to comply with the order within fifteen (15) calendar days of that order's becoming final, the employer or insurer shall be subject to penalties as set forth in § 50-6-238(d).*

(D) *In any civil action filed pursuant to this chapter, the court shall have the authority to assess penalties as provided in this subdivision (b)(3).*

(c)(1) *Upon making the first payment of benefits, and upon stopping or changing the benefits for any cause other than final settlement, or upon denying a claim after proper investigation, the employer's insurance carrier or the employer, if self-insured, shall immediately notify the administrator, on a form prescribed by the administrator, that the payment of income benefits has begun or has been stopped or changed.*

(2) *[Deleted by 2013 amendment, effective July 1, 2014.]*

(d)(1) *If payments have been made without an award, and the employer subsequently elects to controvert the employer's liability, notice of controversy shall be filed with the administrator within fifteen (15) days of the due date of the first omitted payment.*

(2) *In such cases, the prior payment of compensation shall not be considered a binding determination of the obligations of the employer as to future compensation payments.*

(3) *Likewise, the acceptance of compensation by the employee shall not be considered a binding determination of the obligations of the employer as to future compensation payments; nor shall the acceptance of compensation by the employee be considered a binding determination of the employee's rights.*

#### **50-6-206. Settlements. [Effective until July 1, 2014.]**

(a)(1) *The interested parties shall have the right to settle all matters of compensation between themselves, but all settlements, before the settlements are binding on either party, shall be reduced to writing and shall be approved by the judge of the circuit court or chancery court of the county where the claim for compensation is entitled to be made. It shall be the duty of the judge of the circuit court or chancery court to whom any proposed settlement is presented for approval under this chapter, to examine the*

proposed settlement to determine whether the employee is receiving, substantially, the benefits provided by this chapter. To this end, the judge may call and examine witnesses. Upon the settlement's being approved, judgment shall be rendered on the settlement by the court and duly entered by the clerk. The cost of the proceeding shall be borne by the employer. Certified copies of all papers, orders, judgments and decrees filed or entered by the court upon the approval of such settlement, together with a copy of the settlement agreement, shall be forwarded to the division of workers' compensation by the employer within ten (10) days after the entry of the judgment. If it appears that any settlement approved by the court does not secure to the employee in a substantial manner the benefits of this chapter, the settlement may, in the discretion of the trial judge, be set aside at any time within thirty (30) days after the receipt of the papers by the division, upon the application of the employee or the administrator of the division in the employee's behalf, whether the court has adjourned in the meantime or not, notwithstanding § 50-6-230 to the contrary. In all cases where the settlement proceedings or any other court proceedings for workers' compensation under this chapter involve a subsequent injury wherein the employee would be entitled to receive or is claiming compensation from the second injury fund provided for in § 50-6-208, the administrator shall be made a party defendant to the proceedings in an action filed by either the employer or the injured employee and an attorney representing the department under the supervision of the attorney general and reporter shall represent the administrator in the proceeding. The court, by its decree, shall determine the right of the claimant to receive compensation from the fund, and the clerk of the court shall furnish to the administrator a certified copy of the decree, the cost of which shall be added to the costs of the proceedings and shall be paid as other costs are adjudged in the case.

(2) Notwithstanding any other provision of this chapter to the contrary, the parties shall not be permitted to compromise and settle the issue of future medical benefits to which an employee is entitled pursuant to this chapter, except in accordance with the following:

(A) Nothing in this section shall be construed to prohibit the parties from compromising and settling at any time the issue of future medical benefits; provided, that the settlement agreement is approved by a trial court, or the commissioner or the commissioner's designee, and includes a provision confirming that the claimant has been advised of the consequences of the settlement, if any, with respect to Medicare and TennCare benefits and liabilities.

(B) [Deleted by 2011 amendment.]

(C) Notwithstanding any other provision of this chapter or this subdivision (a)(2), an employee who is determined to be permanently totally disabled shall not be allowed to compromise and settle the employee's rights to future medical benefits.

(D) [Deleted by 2011 amendment.]

(b) Notwithstanding any other provision of this section, if there is a dispute between the parties as to whether a claim is compensable, or as to the amount of compensation due, the parties may settle the matter without regard to whether the employee is receiving substantially the benefits provided by this chapter; provided, that the settlement is determined by the court, or the commissioner or the commissioner's designee, to be in the best interest of the

employee.

(c)(1) The commissioner or the commissioner's designee may approve a proposed settlement among the parties if:

(A) The settlement agreement has been signed by the parties;

(B) The commissioner or the commissioner's designee has determined that the employee is receiving, substantially, the benefits provided by this chapter, or, in cases subject to subsection (b), in the best interest of the employee; and

(C) If the employee was not represented by counsel at a benefit review conference, the settlement agreement shall be reviewed by a specialist within the department who was not associated with the employee's case.

(2) Among the parties, a settlement approved by the commissioner pursuant to this subsection (c) shall be entitled to the same standing as a judgment of a court of record for purposes of § 50-6-230 and all other purposes. A settlement approved by the commissioner may be appealed as a final order pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(3)(A) For settlements in which the employee is represented by counsel, the parties shall seek the approval of the department as provided in this subsection (c), unless the parties agree to seek the approval of a court pursuant to subsection (a).

(B) For settlements in which the employee is not represented by counsel, the parties shall seek the approval of a court pursuant to subsection (a), unless the parties agree to seek approval from the department pursuant to this subsection (c).

(4) The commissioner or the commissioner's designee shall approve or reject settlements submitted to the department within three (3) business days of receiving the settlement. The review and approval or disapproval shall be provided in the regional offices of the division or other location agreed to by the parties and the division. If the commissioner or the designee does not approve or reject the settlement within three (3) business days, either party may submit a copy of the signed settlement to any court with jurisdiction to hear the underlying workers' compensation claim. If the injured employee is not represented by counsel, the review shall be conducted in person.

(5) In approving settlements pursuant to this subsection (c), the commissioner or the commissioner's designee shall consider all pertinent factors, including degree of medical impairment, the employee's age, education, skills and training, local job opportunities and capacity to work at types of employment available in the claimant's disabled condition. If the injured employee is not represented by counsel, then the commissioner or the commissioner's designee shall thoroughly inform the employee of the scope of benefits available under this chapter, the employee's rights and the procedures necessary to protect those rights.

**50-6-207. Schedule of compensation. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

The following is the schedule of compensation to be allowed employees under this chapter:

**(1) Temporary Total Disability.**

(A) For injury producing temporary total disability, sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages as defined in this chapter, subject to the maximum weekly benefit and minimum weekly benefit; provided, that if the employee's average weekly wages are equal to or greater than the minimum weekly benefit, the employee shall receive not less than the minimum weekly benefit; and provided, further, that if the employee's average weekly wages are less than the minimum weekly benefit, the employee shall receive the full amount of the employee's average weekly wages, but in no event shall the compensation paid be less than the minimum weekly benefit. Where a fractional week of temporary total disability is involved, the compensation for each day shall be one seventh ( $\frac{1}{7}$ ) of the amount due for a full week;

(B)(i) An employer may choose to continue to compensate an injured employee at the employee's regular wages or salary during the employee's period of temporary total and temporary partial disability. The payments shall not result in an employee's receiving less than the employee would otherwise receive for temporary disability benefits under this chapter; however, a court or the department has no authority to require an employer to pay any temporary disability benefits required by subdivision (1)(A), in addition to the employee's regular wages or salary;

(ii) When an employee receives payments under subdivision (1)(B)(i) and the employee's claim for compensation under this chapter is determined by a court or settlement to be compensable, the employer shall be given credit for the payments. The credit shall be no more than the employee would have been otherwise paid under subdivision (1)(A), and any amount paid beyond the amount that would have otherwise been paid under subdivision (1)(A) shall not be credited against any award for permanent disability;

(C) Any person who has drawn unemployment compensation benefits and who subsequently receives compensation for temporary disability benefits under a workers' compensation law with respect to the same period shall be required to repay the unemployment compensation benefits; provided, that the amount to be repaid does not exceed the amount of temporary disability benefits;

(D) An employee claiming a mental injury as defined by § 50-6-102 occurring on or after July 1, 2009, shall be conclusively presumed to be at maximum medical improvement upon the earliest occurrence of the following:

(i) At the time the treating psychiatrist concludes the employee has reached maximum medical improvement;

(ii) One hundred four (104) weeks after the employee has reached maximum medical improvement as a result of the physical injury or illness that is the proximate cause of the mental injury; or

(iii) One hundred four (104) weeks after the date of injury in the case of mental injuries where there is no underlying physical injury;

(E) If a treating physician determines that pain is persisting for an injured worker beyond an expected period for healing, the physician may refer such injured worker for pain management, encompassing pharma-

cological, nonpharmacological and other approaches to reduce or stop pain sensations. Such injured worker shall be presumed to have reached maximum medical improvement at the earliest occurrence of the following:

- (i) The treating physician determines the injured worker has reached maximum medical improvement; or
  - (ii) One hundred and four (104) weeks after the commencement of pain management pursuant to the referral of the treating physician;
- (2) **Temporary Partial Disability.** In all cases of temporary partial disability, the compensation shall be sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the difference between the average weekly wage of the worker at the time of the injury and the wage the worker is able to earn in the worker's partially disabled condition. This compensation shall be paid during the period of the disability, not, however, beyond four hundred (400) weeks, payment to be made at the intervals when the wage was payable, as nearly as may be, and subject to the same maximum, as stated in subdivision (1). In no event shall the compensation be less than the minimum weekly benefit;
- (3) **Permanent Partial Disability.**

(A) In case of disability partial in character but adjudged to be permanent, there shall be paid to the injured employee, in addition to the benefits provided by § 50-6-204, the following:

(i) Sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the injured employee's average weekly wages for the period of time during which the injured employee suffers temporary total disability on account of the injury, the benefit being subject to the same limitation as to minimum and maximum as provided in subdivision (1); and

(ii) In addition, the injured employee shall receive sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the injured employee's average weekly wages in accordance with the schedule set out in this subdivision (3); provided, that the compensation paid the injured employee for the period of temporary total disability and temporary partial disability shall not be deducted from the compensation to be paid under the schedule:

(a) For the loss of a thumb, sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the average weekly wages during sixty (60) weeks;

(b) For the loss of a first finger, commonly called an index finger, sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the average weekly wages during thirty-five (35) weeks;

(c) For the loss of a second finger, sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the average weekly wages during thirty (30) weeks;

(d) For the loss of a third finger, sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the average weekly wages during twenty (20) weeks;

(e) For the loss of a fourth finger, commonly called a little finger, sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the average weekly wages during fifteen (15) weeks;

(f) For the loss of the first phalange of the thumb, or of any finger, which shall be considered equal to the loss of one half ( $\frac{1}{2}$ ) of such thumb or finger, compensation shall be paid at the prescribed rate during one half ( $\frac{1}{2}$ ) of the time specified for the thumb or finger;

(g) The loss of more than one (1) phalange shall be considered as the loss of the entire finger or thumb; provided, that in no case shall the amount received for more than one (1) finger exceed the amount

provided in this schedule for the loss of a hand;

(h) For the loss of the great toe, sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during thirty (30) weeks;

(i) For the loss of one (1) of the toes other than the great toe, sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during ten (10) weeks;

(j) The loss of a first phalange of any toe shall be considered to be equal to the loss of one half ( $\frac{1}{2}$ ) of such toe, and compensation shall be paid at the prescribed rate during one half ( $\frac{1}{2}$ ) the time specified for the toe;

(k) The loss of more than one phalange shall be considered as the loss of the entire toe;

(l) For the loss of a hand, sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during one hundred fifty (150) weeks;

(m) For the loss of an arm, sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during two hundred (200) weeks;

(n) For the loss of a foot, sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages for one hundred twenty-five (125) weeks;

(o) For the loss of a leg, sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during two hundred (200) weeks;

(p) Compensation for an arm or leg, if amputated above the wrist joint or above the ankle joint shall be for the loss of the arm or leg;

(q) For the loss of an eye, sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during one hundred (100) weeks;

(r) For the complete permanent loss of hearing in both ears, sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during one hundred fifty (150) weeks;

(s) For the loss of an eye and a leg, sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during three hundred fifty (350) weeks;

(t) For the loss of an eye and an arm, sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during three hundred fifty (350) weeks;

(u) For the loss of an eye and a hand, sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during three hundred twenty-five (325) weeks;

(v) For the loss of an eye and a foot, sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during three hundred (300) weeks;

(w) For the loss of two (2) arms, other than at the shoulder, sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during four hundred (400) weeks;

(x) For the loss of two (2) hands, sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during four hundred (400) weeks;

(y) For the loss of two (2) legs, sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during four hundred (400) weeks;

(z) For the loss of two (2) feet, sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during four hundred (400) weeks;

(aa) For the loss of one (1) arm and the other hand, sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages during four

hundred (400) weeks;

(bb) For the loss of one (1) hand and (1) foot, sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the average weekly wages during four hundred (400) weeks;

(cc) For the loss of one (1) leg and one (1) hand, sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the average weekly wages during four hundred (400) weeks;

(dd) For the loss of one (1) arm and one (1) foot, sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the average weekly wages during four hundred (400) weeks; and

(ee) For the loss of one (1) arm and one (1) leg, sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the average weekly wages during four hundred (400) weeks;

(B) The total amount of compensation payable in this subdivision (3) shall not exceed the maximum total benefit;

(C) When an employee sustains concurrent injuries resulting in concurrent disabilities, such employee shall receive compensation only for the injury that produced the longest period of disability, but this section shall not affect liability for the concurrent loss of more than one (1) member, for which members' compensations are provided in the specific schedule and in subdivision (4)(B). In all cases the permanent and total loss of the use of a member shall be considered as equivalent to the loss of that member, but in such cases the compensation in and by the schedule provided shall be in lieu of all other compensation;

(D) In cases of permanent partial disability due to injury to a member resulting in less than total loss of use of the member not otherwise compensated in this schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the schedule for the total loss or total loss of use of the respective member that the extent of injury to the member bears to its total loss. If an injured employee refuses employment suitable to the injured employee's capacity, offered to or procured for the injured employee, the injured employee shall not be entitled to any compensation at any time during the continuance of the refusal, unless at any time in the opinion of a court having jurisdiction over the underlying workers' compensation case the refusal is justifiable. All compensation provided in this subdivision (3) for loss to members, or loss of use of members, is subject to the same limitation as to maximum and minimum as are stated in subdivision (1);

(E) For serious disfigurement to the head, face or hands, not resulting from the loss of a member or other injury specifically compensated, so altering the personal appearance of the injured employee as to materially affect the injured employee's employability in the employment in which the injured employee was injured or other employment for which the injured employee is then qualified, sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the average weekly wages for the period the court determines, not exceeding two hundred (200) weeks. This benefit shall not be awarded in any case where the injured employee is compensated under any other provision of this chapter;

(F) All other cases of permanent partial disability enumerated in this subdivision (3) shall be apportioned to the body as a whole, which shall have a value of four hundred (400) weeks, and there shall be paid

compensation to the injured employee for the proportionate loss of use of the body as a whole resulting from the injury. Compensation for such permanent partial disability shall be subject to the same limitations as to maximum and minimum as provided in subdivision (1). If an employee has previously sustained an injury compensable under this section for which a court of competent jurisdiction has awarded benefits based on percentage of disability to the body as a whole and suffers a subsequent injury not enumerated in this subdivision (3), the injured employee shall be paid compensation for the period of temporary total disability and only for the degree of permanent disability that results from the subsequent injury. The benefits provided by this subdivision (3)(F) shall not be awarded in any case where benefits for a specific loss are otherwise provided in this chapter;

**(4) Permanent Total Disability.**

(A)(i) For permanent total disability as defined in subdivision (4)(B), sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ) of the wages received at the time of the injury, subject to the maximum weekly benefit and minimum weekly benefit; provided, that if the employee's average weekly wages are equal to or greater than the minimum weekly benefit, the employee shall receive not less than the minimum weekly benefit; provided, further, that if the employee's average weekly wages are less than the minimum weekly benefit, the employee shall receive the full amount of the employee's average weekly wages, but in no event shall the compensation paid be less than the minimum weekly benefit. This compensation shall be paid during the period of the permanent total disability until the employee is, by age, eligible for full benefits in the Old Age Insurance Benefit Program under the Social Security Act, compiled in 42 U.S.C. § 401 et seq.; provided, that with respect to disabilities resulting from injuries that occur after sixty (60) years of age, regardless of the age of the employee, permanent total disability benefits are payable for a period of two hundred sixty (260) weeks. The compensation payments shall be reduced by the amount of any old age insurance benefit payments attributable to employer contributions that the employee may receive under title 42, chapter 7, title II of the Social Security Act, 42 U.S.C. § 401 et seq. Notwithstanding any statute or court decision to the contrary, the statutory social security offset provided by this section shall have no applicability to death benefits awarded to a deceased worker's dependents pursuant to this chapter;

(ii) Notwithstanding any other law to the contrary and notwithstanding any agreement of the parties to the contrary, permanent total disability payments shall not be commuted to a lump sum, except in accordance with the following:

(a) Benefits may be commuted to a lump sum to pay only the employee's attorney's fees and litigation expenses and to pay pre-injury obligations in arrears;

(b) The commuted portion of an award shall not exceed the value of one hundred (100) weeks of the employee's benefits;

(c) After the total amount of the commuted lump sum is determined, the amount of the weekly disability benefit shall be recalculated to distribute the total remaining permanent total benefits in equal weekly installments beginning with the date of entry of the order and terminating on the date the employee's disability benefits

terminate pursuant to subdivision (4)(A)(i);

(iii) Attorneys' fees in contested cases of permanent total disability shall be calculated upon the first four hundred (400) weeks of disability only;

(iv) In case an employee who is permanently and totally disabled becomes a resident of a public institution, and provided further, that if no person or persons are wholly dependent upon the employee, then the amounts falling due during the lifetime of the employee shall be paid to the employee or to the employee's guardian or conservator, if adjudicated incompetent, to be spent for the employee's benefit; such payments to cease upon the death of the employee;

(B) When an injury not otherwise specifically provided for in this chapter totally incapacitates the employee from working at an occupation that brings the employee an income, the employee shall be considered totally disabled and for such disability compensation shall be paid as provided in subdivision (4)(A); provided, that the total amount of compensation payable under this subdivision (4)(B) shall not exceed the maximum total benefit, exclusive of medical and hospital benefits;

(C)(i) If an employee is determined, by trial or settlement, to be permanently totally disabled, the employer, insurer or the department, in the event the second injury fund is involved, may have the employee examined, at the expense of the requesting entity, from time to time, subject to the conditions outlined in this section, and may seek reconsideration of the issue of permanent total disability as provided in this subdivision (4)(C);

(ii) The request for the examination of the employee may not be made until twenty-four (24) months have elapsed following the entry of a final order in which it is determined that the employee is permanently totally disabled. Any request for an examination is subject to considerations of reasonableness in regard to notice prior to examination, place of examination and length of examination;

(iii) A request for an examination may not be made more often than once every twenty-four (24) months. The procedure for this examination shall be as follows:

(a) The requesting entity shall first make informal contact with the employee, either by letter or by telephone, to attempt to schedule an appointment with a physician for examination at a mutually agreeable time and place. It is the intent of the general assembly that the requesting entity make a good faith effort to reach a mutual agreement for examination, recognizing the inherently intrusive nature of a request for examination;

(b) If, after a reasonable period of time, not to exceed thirty (30) days, mutual agreement is not reached, the requesting entity shall send the employee written notice of demand for examination by certified mail, return receipt requested, on a form provided by the department. The form shall clearly inform the employee of the following: the date, time and place of the examination; the name of the examining physician; the employee's obligations; any pertinent time limitations; the employee's rights; and any consequences of the employee's failure to submit to the examination. The examination shall be scheduled to take place within thirty (30) days of the date on

the notice;

(c) After receipt of the notice of demand for examination, the employee shall either submit to the examination at the time and place identified in the notice form, or, within thirty (30) days from the date of the notice, the employee shall schedule an appointment for a different date and time conducted by the same physician, and this examination shall be completed no later than ninety (90) days from the date of the notice;

(d) In the event the employee fails to submit to the examination at the time and place identified in the notice form and fails to schedule, within thirty (30) days from the date of the notice, an alternative examination date, as provided in subdivision (4)(C)(iii)(c), then the employee's periodic benefits shall be suspended for a period of thirty (30) days;

(e) In the event the employee schedules an alternative date for the examination as provided in subdivision (4)(C)(iii)(c), and fails to submit to the examination within the ninety (90) day period, then the employee's periodic benefits shall be suspended for a period of thirty (30) days beginning at the end of the ninety (90) day period within which the alternatively scheduled examination was to be completed;

(f) If the employee submits to an examination within any period of suspension of benefits, then within fourteen (14) days of the submission, periodic benefits shall be restored and any periodic benefits that were withheld during any period of suspension of benefits shall be remitted to the employee;

(g) Within ten (10) days of the date on which periodic benefits are suspended pursuant to either subdivision (4)(C)(iii)(d) or (4)(C)(iii)(e), the entity suspending the periodic benefits shall notify the department, in writing, that periodic benefits have been suspended and the date on which the periodic benefits were suspended and shall provide the department a copy of the original notice of demand for examination sent to the employee; and

(h) After the department receives notice of suspension of benefits pursuant to either subdivision (4)(C)(iii)(d) or (4)(C)(iii)(e), the department shall contact the employee and for a period of thirty (30) days assist the employee to schedule an examination to be conducted by the physician named in the notice. After the thirty (30) day assistance period has elapsed, if the employee has not submitted to an examination, the department shall authorize the employer, insurer or department to suspend periodic benefits for a period of thirty (30) days. At the conclusion of each thirty (30) day suspension period, periodic benefits shall be restored. After the restoration of periodic benefits, the department shall, in thirty (30) day cycles, continue to assist the employee to schedule the examination, to be followed by thirty (30) day cycles of suspension of benefits until the examination of the employee is completed. If, at any time during any period of suspension of periodic benefits, the employee submits to an examination, then within fourteen (14) days of notice of the examination having been conducted, periodic benefits shall be restored and any periodic benefits that were withheld during any period of suspension shall be remitted to the employee;

(iv) Subsequent to an examination as described in this subdivision (4)(C), the employer, insurer or department may request a reconsideration of the issue of whether the employee continues to be permanently totally disabled based on any changes in the employee's circumstances that have occurred since the time of the initial settlement or trial;

(v) Prior to filing any request for reconsideration, the employer, insurer or department shall request a benefit review conference with the department. The parties may not waive the benefit review conference. If the parties are unable to reach an agreement at the benefit review conference, the employer, insurer or department may file a request for reconsideration before the court originally adjudging or approving the award of permanent total disability. In the event that a settlement approved by the department is to be reconsidered under these provisions, then a cause of action should be filed as provided in § 50-6-225;

(vi) In the event a reconsideration request is filed pursuant to this section, the only remedy available to the employer, insurer or department is the modification or termination of future periodic disability benefits;

(vii) In the event the employer, insurer or department files a request for reconsideration or cause of action under this subdivision (4)(C) and the court does not terminate the employee's future periodic disability benefits, the employee shall be entitled to an award of reasonable attorney fees, court costs and reasonable and necessary expenses incurred by the employee in responding to the request for reconsideration upon application to and approval by the court. In determining what attorney fees shall be awarded under this subdivision (4)(C), the court shall make specific findings with respect to the following criteria:

(a) The time and labor required, the novelty and difficulty of the questions involved in responding to the request for reconsideration, and the skill requisite to perform the legal service properly;

(b) The fee customarily charged in the locality or by the attorney for similar legal services;

(c) The amount involved and the results obtained;

(d) The time limitations imposed by the client or by the circumstances; and

(e) The experience, reputation, and ability of the lawyer or lawyers performing the services;

(D)(i) The employer, insurer or department, in the event the second injury fund is involved, shall notify the department, on a form to be developed by the department, of the entry of a final order adjudging an employee to be permanently totally disabled. The form shall be submitted to the department within thirty (30) days of the entry of the order;

(ii) On an annual basis, the department shall require an employee who is receiving permanent total disability benefits to certify on forms provided by the department that the employee continues to be permanently totally disabled, that the employee is not currently working at an occupation that brings the employee an income and has not been gainfully employed since the date permanent total disability benefits were awarded, by trial or settlement;

(iii) The department shall send the certification form to the employee by certified mail, return receipt requested and shall include a self-

addressed stamped envelope for the return of the completed form; and

(iv) In each annual cycle, if the employee fails to return the form to the department within thirty (30) days of the date of receipt of the form, as evidenced by the date on the return receipt notice, then the department shall notify the entity who gave notice to the department that the employee was permanently totally disabled pursuant to subdivision (4)(D)(i) that four (4) weeks of periodic disability benefits shall be withheld from the employee as a penalty for the failure to return the form to the department. If the completed form is returned to the department within one hundred twenty (120) days of the date on the return receipt notice, the department shall notify the appropriate entity and then, within fourteen (14) days of receipt of the notice from the department, that entity shall refund to the employee the entire four (4) weeks of periodic disability benefits previously withheld from the employee;

(5) **Deductions in Case of Death.** In case a worker sustains an injury due to an accident arising out of and in the course of the worker's employment, and during the period of disability caused by the injury death results proximately from the injury, all payments previously made as compensation for the injury shall be deducted from the compensation, if any, due on account of death; and

(6) For social security purposes only, as permitted by federal law or regulation, in an award of compensation as a lump sum or a partial lump sum under this chapter for permanent partial or permanent total disability, the court may make a finding of fact that the payment represents a payment to the individual to be distributed over the individual's lifetime based upon life expectancy as determined from mortality tables from this code.

**50-6-207. Schedule of compensation. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*The following is the schedule of compensation to be allowed employees under this chapter:*

**(1) Temporary Total Disability.**

(A) *For injury producing temporary total disability, sixty-six and two thirds percent (66 <sup>2</sup>/<sub>3</sub>%) of the average weekly wages as defined in this chapter, subject to the maximum weekly benefit and minimum weekly benefit; provided, that if the employee's average weekly wages are equal to or greater than the minimum weekly benefit, the employee shall receive not less than the minimum weekly benefit; and provided, further, that if the employee's average weekly wages are less than the minimum weekly benefit, the employee shall receive the full amount of the employee's average weekly wages, but in no event shall the compensation paid be less than the minimum weekly benefit. Where a fractional week of temporary total disability is involved, the compensation for each day shall be one seventh (<sup>1</sup>/<sub>7</sub>) of the amount due for a full week;*

(B)(i) *An employer may choose to continue to compensate an injured employee at the employee's regular wages or salary during the employee's period of temporary total and temporary partial disability. The payments shall not result in an employee's receiving less than the employee would otherwise receive for temporary disability benefits under this chapter;*

*however, a court or the department has no authority to require an employer to pay any temporary disability benefits required by subdivision (1)(A), in addition to the employee's regular wages or salary;*

*(ii) When an employee receives payments under subdivision (1)(B)(i) and the employee's claim for compensation under this chapter is determined by a court or settlement to be compensable, the employer shall be given credit for the payments. The credit shall be no more than the employee would have been otherwise paid under subdivision (1)(A), and any amount paid beyond the amount that would have otherwise been paid under subdivision (1)(A) shall not be credited against any award for permanent disability;*

*(C) Any person who has drawn unemployment compensation benefits and who subsequently receives compensation for temporary disability benefits under a workers' compensation law with respect to the same period shall be required to repay the unemployment compensation benefits; provided, that the amount to be repaid does not exceed the amount of temporary disability benefits;*

*(D) An employee claiming a mental injury as defined by § 50-6-102 occurring on or after July 1, 2009, shall be conclusively presumed to be at maximum medical improvement upon the earliest occurrence of the following:*

*(i) At the time the treating psychiatrist concludes the employee has reached maximum medical improvement; or*

*(ii) [Deleted by 2013 amendment, effective July 1, 2014.]*

*(iii) One hundred four (104) weeks after the date of injury in the case of mental injuries where there is no underlying physical injury;*

*(E) An employee claiming an injury as defined in § 50-6-102, other than a mental injury, when the date of injury is on or after July 1, 2014, shall be conclusively presumed to be at maximum medical improvement when the treating physician ends all active medical treatment and the only care provided is for the treatment of pain. The employer shall be given credit against an award of permanent disability for any amount of temporary total disability benefits paid to the employee after the date that the employee attains maximum medical improvement as determined by a workers' compensation judge.*

**(2) Temporary Partial Disability.**

*(A) In all cases of temporary partial disability, the compensation shall be sixty-six and two thirds percent (66  $\frac{2}{3}$ %) of the difference between the average weekly wage of the worker at the time of the injury and the wage the worker is able to earn in the worker's partially disabled condition. This compensation shall be paid during the period of the disability, not, however, beyond four hundred fifty (450) weeks, payment to be made at the intervals when the wage was payable, as nearly as may be, and subject to the same maximum, as stated in subdivision (1). In no event shall the compensation be less than the minimum weekly benefit;*

*(B) In all cases of temporary partial disability for claims with a date of injury on or after July 1, 2014, the compensation shall be sixty-six and two-thirds percent (66  $\frac{2}{3}$ %) of the difference between the average weekly wage of the worker at the time of the injury and the wage the worker is able to earn in the worker's partially disabled condition. This compensation shall be paid during the period of the disability, but payment shall not*

*extend beyond four hundred fifty (450) weeks. Payment shall be made at the intervals when the wage was payable, as nearly as may be, and subject to the same maximum, as stated in subdivision (1). In no event shall the compensation be less than the minimum weekly benefit;*

*(C) In any case when a dispute exists over the date of the employee's attainment of maximum medical improvement, the employer shall be given credit against an award of permanent disability for any amount of temporary partial disability paid to the employee after the date on which the workers' compensation judge determines maximum medical improvement.*

**(3) Permanent Partial Disability.**

*(A) In case of disability partial in character but adjudged to be permanent, at the time the injured employee reaches maximum medical improvement the injured employee shall be paid sixty-six and two-thirds percent (66  $\frac{2}{3}$ %) of the employee's average weekly wages for the period of compensation, which shall be determined by multiplying the employee's impairment rating by four hundred fifty (450) weeks. The injured employee shall receive these benefits, in addition to the benefits provided in subdivisions (1) and (2) and those provided by § 50-6-204, whether the employee has returned to work or not; and*

*(B) If at the time the period of compensation provided by subdivision (3)(A) ends, the employee has not returned to work with any employer or has returned to work and is receiving wages or a salary that is less than one hundred percent (100%) of the wages or salary the employee received from his pre-injury employer on the date of injury, the injured employee may file a claim for increased benefits. If appropriate, the injured employee's award as determined under subdivision (3)(A) shall be increased by multiplying the award by a factor of one and thirty-five one hundredths (1.35); in addition, the injured employee's award shall be further increased by multiplying the award by the product of the following factors, if applicable:*

*(i) Education: One and forty-five one hundredths (1.45), if the employee lacks a high school diploma or general equivalency diploma;*

*(ii) Age: One and two tenths (1.2), if the employee was more than forty (40) years of age at the time the period of compensation ends; and*

*(iii) Unemployment rate: One and three tenths (1.3), if the unemployment rate, in the Tennessee county where the employee was employed by the employer on the date of the workers' compensation injury, was at least two (2) percentage points greater than the yearly average unemployment rate in Tennessee according to the yearly average unemployment rate compiled by the department for the year immediately prior to the expiration of the period of compensation.*

*(C) In determining the employee's increased award pursuant to subdivision (3)(B), the employer shall be given credit for payment of the original award of benefits as determined under subdivision (3)(A) against the increased award.*

*(D) Any employee may file a claim for increased benefits under subdivision (3)(B) by filing a new petition for benefit determination, on a form prescribed by the administrator, with the division no more than one (1) year after the period of compensation provided in subdivision (3)(A) ends. Any claim for increased benefits under this subdivision (3)(D) shall be forever barred, unless the employee files a new petition for benefit determination*

*with the division within one (1) year after the period of compensation for the subject injury ends. Under no circumstances shall an employee be entitled to additional benefits when:*

*(i) The employee's loss of employment is due to the employee's voluntary resignation or retirement; provided, however, that the resignation or retirement does not result from the work-related disability;*

*(ii) The employee's loss of employment is due to the employee's misconduct connected with the employee's employment; or*

*(iii) The employee remains employed but received a reduction in salary, wages, or hours that is concurrent with a reduction in salary, wages or reduction in hours that affected at least fifty percent (50%) of all hourly employees operating at or out of the same location.*

*(E) Nothing in this subsection shall prohibit the employer and employee from settling the issue of additional benefits at any time after the employee reaches maximum medical improvement. Any settlement or award of additional permanent partial disability benefits pursuant to this subdivision shall give the employer credit for prior permanent partial disability benefits paid to the employee.*

*(F) Subdivision (3)(B) shall not apply to injuries sustained by an employee who is not eligible or authorized to work in the United States under federal immigration laws.*

*(G) The total amount of compensation payable in this subdivision (3) shall not exceed the maximum total benefit. The payment of temporary total disability benefits or temporary partial disability benefits shall not be included in calculating the maximum total benefit.*

*(H) All cases of permanent partial disability shall be apportioned to the body as a whole, which shall have a value of four hundred fifty (450) weeks, and there shall be paid compensation to the injured employee for the proportionate loss of use of the body as a whole resulting from the injury. If an employee has previously sustained an injury compensable under this section and has been awarded benefits for that injury, the injured employee shall be paid compensation for the period of temporary total disability or temporary partial disability and only for the degree of permanent disability that results from the subsequent injury.*

**(4) Permanent Total Disability.**

*(A)(i) For permanent total disability as defined in subdivision (4)(B), sixty-six and two thirds percent (66⅔%) of the wages received at the time of the injury, subject to the maximum weekly benefit and minimum weekly benefit; provided, that if the employee's average weekly wages are equal to or greater than the minimum weekly benefit, the employee shall receive not less than the minimum weekly benefit; provided, further, that if the employee's average weekly wages are less than the minimum weekly benefit, the employee shall receive the full amount of the employee's average weekly wages, but in no event shall the compensation paid be less than the minimum weekly benefit. This compensation shall be paid during the period of the permanent total disability until the employee is, by age, eligible for full benefits in the Old Age Insurance Benefit Program under the Social Security Act, compiled in 42 U.S.C. § 401 et seq.; provided, that with respect to disabilities resulting from injuries that occur less than five (5) years before the date when the employee is eligible for full benefits in the Old Age Insurance Benefit Program as referenced*

*previously in this subdivision (4)(A)(i) or after the employee is eligible for such benefits, permanent total disability benefits are payable for a period of two hundred sixty (260) weeks. The compensation payments shall be reduced by the amount of any old age insurance benefit payments attributable to employer contributions that the employee may receive under title 42, chapter 7, title II of the Social Security Act, 42 U.S.C. § 401 et seq. Notwithstanding any statute or court decision to the contrary, the statutory social security offset provided by this section shall have no applicability to death benefits awarded to a deceased worker's dependents pursuant to this chapter;*

*(ii) Notwithstanding any other law to the contrary and notwithstanding any agreement of the parties to the contrary, permanent total disability payments shall not be commuted to a lump sum, except in accordance with the following:*

*(a) Benefits may be commuted to a lump sum to pay only the employee's attorney's fees and litigation expenses and to pay pre-injury obligations in arrears;*

*(b) The commuted portion of an award shall not exceed the value of one hundred (100) weeks of the employee's benefits;*

*(c) After the total amount of the commuted lump sum is determined, the amount of the weekly disability benefit shall be recalculated to distribute the total remaining permanent total benefits in equal weekly installments beginning with the date of entry of the order and terminating on the date the employee's disability benefits terminate pursuant to subdivision (4)(A)(i);*

*(iii) For injuries occurring before July 1, 2014, attorneys' fees in contested cases of permanent total disability shall be calculated upon the first four hundred (400) weeks of disability only; for injuries occurring on or after July 1, 2014, attorneys' fees in contested cases of permanent disability shall be calculated upon the first four hundred fifty (450) weeks of disability only;*

*(iv) In case an employee who is permanently and totally disabled becomes a resident of a public institution, and provided further, that if no person or persons are wholly dependent upon the employee, then the amounts falling due during the lifetime of the employee shall be paid to the employee or to the employee's guardian or conservator, if adjudicated incompetent, to be spent for the employee's benefit; such payments to cease upon the death of the employee;*

*(B) When an injury not otherwise specifically provided for in this chapter totally incapacitates the employee from working at an occupation that brings the employee an income, the employee shall be considered totally disabled and for such disability compensation shall be paid as provided in subdivision (4)(A); provided, that the total amount of compensation payable under this subdivision (4)(B) shall not exceed the maximum total benefit, exclusive of medical and hospital benefits;*

*(C)(i) If an employee is determined, by trial or settlement, to be permanently totally disabled, the employer, insurer or the department, in the event the second injury fund is involved, may have the employee examined, at the expense of the requesting entity, from time to time, subject to the conditions outlined in this section, and may seek reconsideration of the issue of permanent total disability as provided in this*

subdivision (4)(C);

(ii) *The request for the examination of the employee may not be made until twenty-four (24) months have elapsed following the entry of a final order in which it is determined that the employee is permanently totally disabled. Any request for an examination is subject to considerations of reasonableness in regard to notice prior to examination, place of examination and length of examination;*

(iii) *A request for an examination may not be made more often than once every twenty-four (24) months. The procedure for this examination shall be as follows:*

(a) *The requesting entity shall first make informal contact with the employee, either by letter or by telephone, to attempt to schedule an appointment with a physician for examination at a mutually agreeable time and place. It is the intent of the general assembly that the requesting entity make a good faith effort to reach a mutual agreement for examination, recognizing the inherently intrusive nature of a request for examination;*

(b) *If, after a reasonable period of time, not to exceed thirty (30) days, mutual agreement is not reached, the requesting entity shall send the employee written notice of demand for examination by certified mail, return receipt requested, on a form provided by the department. The form shall clearly inform the employee of the following: the date, time and place of the examination; the name of the examining physician; the employee's obligations; any pertinent time limitations; the employee's rights; and any consequences of the employee's failure to submit to the examination. The examination shall be scheduled to take place within thirty (30) days of the date on the notice;*

(c) *After receipt of the notice of demand for examination, the employee shall either submit to the examination at the time and place identified in the notice form, or, within thirty (30) days from the date of the notice, the employee shall schedule an appointment for a different date and time conducted by the same physician, and this examination shall be completed no later than ninety (90) days from the date of the notice;*

(d) *In the event the employee fails to submit to the examination at the time and place identified in the notice form and fails to schedule, within thirty (30) days from the date of the notice, an alternative examination date, as provided in subdivision (4)(C)(iii)(c), then the employee's periodic benefits shall be suspended for a period of thirty (30) days;*

(e) *In the event the employee schedules an alternative date for the examination as provided in subdivision (4)(C)(iii)(c), and fails to submit to the examination within the ninety (90) day period, then the employee's periodic benefits shall be suspended for a period of thirty (30) days beginning at the end of the ninety (90) day period within which the alternatively scheduled examination was to be completed;*

(f) *If the employee submits to an examination within any period of suspension of benefits, then within fourteen (14) days of the submission, periodic benefits shall be restored and any periodic benefits that were withheld during any period of suspension of benefits shall be remitted to the employee;*

*(g) Within ten (10) days of the date on which periodic benefits are suspended pursuant to either subdivision (4)(C)(iii)(d) or (4)(C)(iii)(e), the entity suspending the periodic benefits shall notify the department, in writing, that periodic benefits have been suspended and the date on which the periodic benefits were suspended and shall provide the department a copy of the original notice of demand for examination sent to the employee; and*

*(h) After the department receives notice of suspension of benefits pursuant to either subdivision (4)(C)(iii)(d) or (4)(C)(iii)(e), the department shall contact the employee and for a period of thirty (30) days assist the employee to schedule an examination to be conducted by the physician named in the notice. After the thirty (30) day assistance period has elapsed, if the employee has not submitted to an examination, the department shall authorize the employer, insurer or department to suspend periodic benefits for a period of thirty (30) days. At the conclusion of each thirty (30) day suspension period, periodic benefits shall be restored. After the restoration of periodic benefits, the department shall, in thirty (30) day cycles, continue to assist the employee to schedule the examination, to be followed by thirty (30) day cycles of suspension of benefits until the examination of the employee is completed. If, at any time during any period of suspension of periodic benefits, the employee submits to an examination, then within fourteen (14) days of notice of the examination having been conducted, periodic benefits shall be restored and any periodic benefits that were withheld during any period of suspension shall be remitted to the employee;*

*(iv) Subsequent to an examination as described in this subdivision (4)(C), the employer, insurer or department may request a reconsideration of the issue of whether the employee continues to be permanently totally disabled based on any changes in the employee's circumstances that have occurred since the time of the initial settlement or trial;*

*(v) Prior to filing any request for reconsideration, the employer, insurer or department shall file a petition for benefit determination and participate in alternative dispute resolution pursuant to § 50-6-236. In the event the parties are unable to reach an agreement through alternative dispute resolution, the workers' compensation mediator shall issue a dispute certification notice and the employer, insurer or department may file a request for a hearing, as provided in § 50-6-239, to determine the issue of reconsideration.*

*(vi) In the event a reconsideration request is filed pursuant to this section, the only remedy available to the employer, insurer or department is the modification or termination of future periodic disability benefits;*

*(vii) In the event the employer, insurer or department files a request for reconsideration or cause of action under this subdivision (4)(C) and the court does not terminate the employee's future periodic disability benefits, the employee shall be entitled to an award of reasonable attorney fees, court costs and reasonable and necessary expenses incurred by the employee in responding to the request for reconsideration upon application to and approval by the court. In determining what attorney fees shall be awarded under this subdivision (4)(C), the court shall make specific findings with respect to the following criteria:*

*(a) The time and labor required, the novelty and difficulty of the questions involved in responding to the request for reconsideration,*

*and the skill requisite to perform the legal service properly;*

*(b) The fee customarily charged in the locality or by the attorney for similar legal services;*

*(c) The amount involved and the results obtained;*

*(d) The time limitations imposed by the client or by the circumstances; and*

*(e) The experience, reputation, and ability of the lawyer or lawyers performing the services;*

*(D)(i) The employer, insurer or department, in the event the second injury fund is involved, shall notify the department, on a form to be developed by the department, of the entry of a final order adjudging an employee to be permanently totally disabled. The form shall be submitted to the department within thirty (30) days of the entry of the order;*

*(ii) On an annual basis, the department shall require an employee who is receiving permanent total disability benefits to certify on forms provided by the department that the employee continues to be permanently totally disabled, that the employee is not currently working at an occupation that brings the employee an income and has not been gainfully employed since the date permanent total disability benefits were awarded, by trial or settlement;*

*(iii) The department shall send the certification form to the employee by certified mail, return receipt requested and shall include a self-addressed stamped envelope for the return of the completed form; and*

*(iv) In each annual cycle, if the employee fails to return the form to the department within thirty (30) days of the date of receipt of the form, as evidenced by the date on the return receipt notice, then the department shall notify the entity who gave notice to the department that the employee was permanently totally disabled pursuant to subdivision (4)(D)(i) that four (4) weeks of periodic disability benefits shall be withheld from the employee as a penalty for the failure to return the form to the department. If the completed form is returned to the department within one hundred twenty (120) days of the date on the return receipt notice, the department shall notify the appropriate entity and then, within fourteen (14) days of receipt of the notice from the department, that entity shall refund to the employee the entire four (4) weeks of periodic disability benefits previously withheld from the employee;*

*(5) **Deductions in Case of Death.** In case a worker sustains an injury due to an accident arising primarily out of and in the course and scope of the worker's employment, and during the period of disability caused by the injury death results proximately from the injury, all payments previously made as compensation for the injury shall be deducted from the compensation, if any, due on account of death; and*

*(6) For social security purposes only, as permitted by federal law or regulation, in an award of compensation as a lump sum or a partial lump sum under this chapter for permanent partial or permanent total disability, the court may make a finding of fact that the payment represents a payment to the individual to be distributed over the individual's lifetime based upon life expectancy as determined from mortality tables maintained by the United States Centers for Disease Control and Prevention.*

**50-6-208. Subsequent permanent injury after sustaining previous permanent injury — Second injury fund — Disbursement — Pilot project for legal defense of administrator — Settlement authority. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a)(1) If an employee has previously sustained a permanent physical disability from any cause or origin and becomes permanently and totally disabled through a subsequent injury, the employee shall be entitled to compensation from the employee's employer or the employer's insurance company only for the disability that would have resulted from the subsequent injury, and the previous injury shall not be considered in estimating the compensation to which the employee may be entitled under this chapter from the employer or the employer's insurance company; provided, that in addition to the compensation for a subsequent injury, and after completion of the payments for the subsequent injury, then the employee shall be paid the remainder of the compensation that would be due for the permanent total disability out of a special fund to be known as the second injury fund.

(2) To receive benefits from the second injury fund, the injured employee must be the employee of an employer who has properly insured the employer's workers' compensation liability or has qualified to operate under this chapter as a self-insurer, and the employer must establish that the employer had actual knowledge of the permanent and preexisting disability at the time that the employee was hired or at the time that the employee was retained in employment after the employer acquired knowledge, but in all cases prior to the subsequent injury.

(3) In determining the percentage of disability for which the second injury fund shall be liable, no previous physical impairment shall be considered unless the impairment was within the knowledge of the employer as prescribed in subdivision (a)(2).

(4) Nothing in this section shall be construed to limit the employer's liability as provided by law for aggravation of preexisting conditions or disabilities in cases where recovery against the second injury fund is not applicable.

(b)(1)(A) In cases where the injured employee has received or will receive a workers' compensation award or awards for permanent disability to the body as a whole, and the combination of the awards equals or exceeds one hundred percent (100%) permanent disability to the body as a whole, the employee shall not be entitled to receive from the employer or its insurance carrier any compensation for permanent disability to the body as a whole that would be in excess of one hundred percent (100%) permanent disability to the body as a whole, after combining awards.

(B) Benefits that may be due the employee for permanent disability to the body as a whole in excess of one hundred percent (100%) permanent disability to the body as a whole, after combining awards, shall be paid by the second injury fund.

(C) It is the intention of the general assembly that once an employee receives an award or awards for permanent disability to the body as a whole, and the awards total one hundred percent (100%) permanent disability, any permanent disability compensation due for subsequent compensable injuries to the body as a whole shall be paid by the second

injury fund, instead of by the employer.

(D) This subdivision (b)(1) shall apply only to injuries that arise on or before June 30, 2006, and shall have no applicability to injuries that arise on or after July 1, 2006.

(2)(A) The burden of proving the existence of previous awards for permanent disability specific to the body as a whole shall be on the party claiming compensation against the second injury fund. This subdivision (b)(2)(A) shall apply only to injuries that arise on or before June 30, 2006, and shall have no applicability to injuries that arise on or after July 1, 2006.

(B) Claims against the fund shall be made by either the injured employee or the employer in the manner prescribed in § 50-6-206.

(C) Nothing in this section shall relieve the employer or its insurance company of liability for other benefits that may be due the injured employee, including temporary benefits, medical expenses and permanent benefits for injuries other than to the body as a whole, regardless of whether the combination of workers' compensation awards exceeds one hundred percent (100%) permanent disability.

(c) A sum sufficient to provide the benefits of this section shall be allocated from the four percent (4%) premium tax imposed in § 50-6-401(b), subject to a maximum allocation of fifty percent (50%) of the premium tax collected. The sums shall be deposited in the second injury fund for distribution by the administrator of the division of workers' compensation.

(d) There is appropriated a sum sufficient to the second injury fund for payment of benefits provided in this section, pursuant to this section. The appropriation shall be allocated from and equal to an amount not greater than fifty percent (50%) of the revenues derived from the premium tax levied pursuant to § 50-6-401.

(e) The sums collected by the administrator as provided in this section shall be deposited by the administrator in a special fund, which shall be termed the second injury fund, to be disbursed by the administrator only for the purposes stated in this section and shall not at any time be appropriated or diverted to any other purpose. The administrator shall not invest any moneys in the second injury fund in any other manner than is provided by the general laws of the state for investments of funds in the hands of the state treasurer. Disbursements from the fund shall be made by the administrator only after receipt by the administrator of a certified copy of the court decree awarding compensation as provided in this section. Disbursements shall be made only in accordance with the decree. A copy of the decree awarding compensation from the second injury fund shall in all cases be filed with the division.

(f) The commissioner, in consultation with the attorney general and reporter, shall prepare a plan for a pilot project using private legal counsel to defend the administrator in actions claiming compensation from the second injury fund pursuant to § 50-6-206. The plan shall include types of cases, approximate numbers of cases, proposed method of selection and other relevant matters. Any private legal counsel retained for these purposes shall be retained pursuant to § 8-6-106. Expenses relating to private legal counsel retained pursuant to this subsection (f) shall be paid from the second injury fund.

(g)(1) Before any proposed settlement is considered final in cases involving benefits from the second injury fund under this section, it shall either:

(A) Have the written approval of the commissioner or the commissioner's designee, in accordance with subdivision (g)(2); or

(B) Have been approved in accordance with § 20-13-103.

(2) The commissioner is authorized to settle certain second injury fund claims without the necessity of complying with § 20-13-103; provided, that the attorney general and reporter, with the written approval of the governor and the comptroller of the treasury, shall set specific limits and conditions on the settlement authority.

(h) In order to require the second injury fund to participate in the benefit review conference, a party shall serve notice of potential liability on the fund.

(i) "Party" or "parties," as referenced in § 50-6-204(d)(5), shall include the second injury fund.

**50-6-208. Subsequent permanent injury after sustaining previous permanent injury — Second injury fund — Disbursement — Pilot project for legal defense of administrator — Settlement authority. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a)(1) If an employee has previously sustained a permanent physical disability from any cause or origin and becomes permanently and totally disabled through a subsequent injury, the employee shall be entitled to compensation from the employee's employer or the employer's insurance company only for the disability that would have resulted from the subsequent injury, and the previous injury shall not be considered in estimating the compensation to which the employee may be entitled under this chapter from the employer or the employer's insurance company; provided, that in addition to the compensation for a subsequent injury, and after completion of the payments for the subsequent injury, then the employee shall be paid the remainder of the compensation that would be due for the permanent total disability out of a special fund to be known as the second injury fund.*

*(2) To receive benefits from the second injury fund, the injured employee must be the employee of an employer who has properly insured the employer's workers' compensation liability or has qualified to operate this chapter as a self-insurer, and the employer must establish that the employer had actual knowledge of the permanent and preexisting disability at the time that the employee was hired or at the time that the employee was retained in employment after the employer acquired knowledge, but in all cases prior to the subsequent injury.*

*(3) In determining the percentage of disability for which the second injury fund shall be liable, no previous physical impairment shall be considered unless the impairment was within the knowledge of the employer as prescribed in subdivision (a)(2).*

*(4) Nothing in this section shall be construed to limit the employer's liability as provided by law for aggravation of preexisting conditions or disabilities in cases where recovery against the second injury fund is not applicable.*

*(5) Claims against the fund shall be made by either the injured employee or the employer in the manner prescribed in § 50-6-239. In all cases when a party is making a claim against the fund, the party advancing the claim shall give notice to the fund of any alternative dispute resolution proceedings*

*scheduled pursuant to § 50-6-236.*

*(6) Nothing in this section shall relieve the employer or its insurance company of liability for other benefits that may be due the injured employee, including temporary benefits, medical expenses and permanent benefits for injuries.*

*(b) [Deleted by 2013 amendment, effective July 1, 2014.]*

*(c) A sum sufficient to provide the benefits of this section shall be allocated from the four percent (4%) premium tax imposed in § 50-6-401(b), subject to a maximum allocation of fifty percent (50%) of the premium tax collected. The sums shall be deposited in the second injury fund for distribution by the administrator of the division of workers' compensation.*

*(d) There is appropriated a sum sufficient to the second injury fund for payment of benefits provided in this section, pursuant to this section. The appropriation shall be allocated from and equal to an amount not greater than fifty percent (50%) of the revenues derived from the premium tax levied pursuant to § 50-6-401.*

*(e) The sums collected by the administrator as provided in this section shall be deposited by the administrator in a special fund, which shall be termed the second injury fund, to be disbursed by the administrator only for the purposes stated in this section and shall not at any time be appropriated or diverted to any other purpose. The administrator shall not invest any moneys in the second injury fund in any other manner than is provided by the general laws of the state for investments of funds in the hands of the state treasurer. Disbursements from the fund shall be made by the administrator only after receipt by the administrator of a certified copy of the court decree awarding compensation as provided in this section. Disbursements shall be made only in accordance with the decree. A copy of the decree awarding compensation from the second injury fund shall in all cases be filed with the division.*

*(f) The administrator, in consultation with the attorney general and reporter, shall prepare a plan for a pilot project using private legal counsel to defend the administrator in actions claiming compensation from the second injury fund pursuant to § 50-6-206. The plan shall include types of cases, approximate numbers of cases, proposed method of selection and other relevant matters. Any private legal counsel retained for these purposes shall be retained pursuant to § 8-6-106. Expenses relating to private legal counsel retained pursuant to this subsection (f) shall be paid from the second injury fund.*

*(g)(1) Before any proposed settlement is considered final in cases involving benefits from the second injury fund under this section, it shall either:*

*(A) Have the written approval of the administrator or the administrator's designee, in accordance with subdivision (g)(2); or*

*(B) Have been approved in accordance with § 20-13-103.*

*(2) The administrator is authorized to settle certain second injury fund claims without the necessity of complying with § 20-13-103; provided, that the attorney general and reporter, with the written approval of the governor and the comptroller of the treasury, shall set specific limits and conditions on the settlement authority.*

*(h) In order to require the second injury fund to participate in the alternative dispute resolution, a party shall serve notice of potential liability on the fund.*

*(i) "Party" or "parties," as referenced in § 50-6-204(d)(5), shall include the second injury fund.*

**50-6-210. Dependents — Compensation payments. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) **Persons Wholly Dependent.** For the purposes of this chapter, the following persons shall be conclusively presumed to be wholly dependent:

(1) A surviving spouse, unless it is shown that the surviving spouse was voluntarily living apart from the surviving spouse's spouse at the time of injury; and

(2) Children under sixteen (16) years of age.

(b) **Persons Prima Facie Dependent.** Children between sixteen (16) and eighteen (18) years of age, or those over eighteen (18) years of age, if physically or mentally incapacitated from earning, shall prima facie be considered dependent.

(c) **Actual Dependents.** Wife, husband, child, mother, father, grandparent, sister, brother, mother-in-law, father-in-law, who were wholly supported by the deceased employee at the time of death and for a reasonable period of time immediately prior to the time of death, shall be considered actual dependents, and payment of compensation shall be made in the order named.

(d) **Partial Dependents.** Any member of a class named in subsection (c) who regularly derived part of the member's support from the wages of the deceased employee at the time of death and for a reasonable period of time immediately prior to the time of death shall be considered a partial dependent, and payment of compensation shall be made to the dependents in the order named.

(e) **Compensation in Death Cases.** In death cases, compensation payable to dependents shall be computed on the following basis, and shall be paid to the persons entitled to compensation, without administration:

(1) **Surviving Spouse and No Dependent Child.** If the deceased employee leaves a surviving spouse and no dependent child, there shall be paid to the surviving spouse fifty percent (50%) of the average weekly wages of the deceased.

(2) **Surviving Spouse and Children.** If the deceased employee leaves a surviving spouse and one (1) or more dependent children, there shall be paid to the surviving spouse for the benefit of the surviving spouse and the child or children, sixty-six and two-thirds percent (66⅔%) of the average weekly wages of the deceased.

(3) **Surviving Spouse and Children, How Paid.** In all cases where compensation is payable to a surviving spouse for the benefit of the surviving spouse and dependent child or children, the court shall have the power to determine in its discretion what portion of the compensation shall be applied for the benefit of any child or children, and may order the compensation paid to a guardian.

(4) **Remarriage of Surviving Spouse.** Upon the remarriage of a surviving spouse, if there is no child of the deceased employee, the compensation shall terminate; but if there is a child or children under eighteen (18) years of age, or over eighteen (18) years of age if physically or mentally incapacitated from earning, from the time of the remarriage the child or children shall have status of orphan or orphans, and draw compensation accordingly, not, however, to exceed sixty-six and two-thirds percent (66⅔%) of the average weekly wages of the deceased.

(5) **Dependent Orphans.** If the deceased employee leaves one (1) dependent orphan, there shall be paid fifty percent (50%) of the average weekly

wages of the deceased; if the deceased leaves two (2) or more dependent orphans, there shall be paid sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the average weekly wages of the deceased.

(6) **Parent or Parents.** If the deceased employee leaves no surviving spouse or child entitled to any payment under this section, but should leave a parent or parents, either or both of whom are wholly dependent on the deceased, there shall be paid, if only one (1) parent, twenty-five percent (25%) of the average weekly wages of the deceased to the parent, and if both parents, thirty-five percent (35%) of the average weekly wages of the deceased to the parents.

(7) **Grandparent, Brother, Sister, Mother-in-law or Father-in-law.**

If the deceased leaves no surviving spouse or dependent child or parent entitled to any payment under this section, but leaves a grandparent, brother, sister, mother-in-law or father-in-law wholly dependent upon the deceased for support, there shall be paid to the dependent, if only one (1), twenty percent (20%) of the average weekly wages of the deceased, or, if more than one (1), twenty-five percent (25%) of the average weekly wages of the deceased, divided between them or among them share and share alike.

(8) **Compensation to Dependents to Cease upon Death or Marriage.** If compensation is being paid under this chapter to any dependent, the compensation shall cease, upon the death or marriage of the dependent, unless otherwise provided in this section.

(9) **Partial Dependents to Receive Proportion.** Partial dependents shall be entitled to receive only that proportion of the benefits provided for actual dependents that the average amount of the wages regularly contributed by the deceased to the partial dependent at the time of, and for a reasonable time immediately prior to, the injury, bore to the total income of the dependent during the same time.

(10) **Maximum and Minimum Compensation.** The compensation payable in case of death to persons wholly dependent shall be subject to the maximum weekly benefit and minimum weekly benefit; provided, that if at the time of injury the employee receives wages of less than the minimum weekly benefit, the compensation shall be the full amount of the wages a week, but in no event shall the compensation payable under this provision be less than the minimum weekly benefit. The compensation payable to partial dependents shall be subject to the same maximum and minimum specified in this subdivision (e)(10); provided, that if the income loss of the partial dependents by the death is less than the minimum weekly benefit, then the dependents shall receive the full amount of the income loss. This compensation shall be paid during dependency not to exceed the maximum total benefit, payments to be paid at the intervals when the wage was payable, as nearly as may be.

(11) **Orphans and Other Children.** In computing and paying compensation to orphans or other children, in all cases, only those under eighteen (18) years of age, or those over eighteen (18) years of age who are physically or mentally incapacitated from earning, shall be included, the former to receive compensation only during the time they are under eighteen (18) years of age, the latter only for the time they are so incapacitated. If the dependent is attending a recognized educational institution, benefits shall be paid until twenty-two (22) years of age.

(12) **Actual Dependents.** Actual dependents shall be entitled to take compensation in the order named in subsection (c), until sixty-six and

two-thirds percent ( $66\frac{2}{3}\%$ ) of the monthly wages of the deceased during the time specified in this chapter have been exhausted, but the total compensation to be paid to all actual dependents of a deceased employee shall not exceed in the aggregate the maximum weekly benefit.

(13) **Dependency Status Not Affected by Certain Assistance Payments.** Sums distributed under the Employment Security Law, compiled in chapter 7 of this title; the Old-Age Assistance Law, compiled in title 71, chapter 2, part 2; the Aid to Dependent Children Law, compiled in title 71, chapter 3, part 1; Aid to Blind Law, compiled in title 71, chapter 4, part 1; the federal Social Security Act, compiled in 42 U.S.C. § 301 et seq., or any other public assistance distributed by the United States government, the state, or any county or municipality of the state, shall not be considered income within the meaning of this law and shall not affect the status or compensation of any person entitled to benefits as provided in this chapter.

**50-6-210. Dependents — Compensation payments. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

(a) **Persons Wholly Dependent.** *For the purposes of this chapter, the following persons shall be conclusively presumed to be wholly dependent:*

(1) *A surviving spouse, unless it is shown that the surviving spouse was voluntarily living apart from the surviving spouse's spouse at the time of injury; and*

(2) *Children under sixteen (16) years of age.*

(b) **Persons Prima Facie Dependent.** *Children between sixteen (16) and eighteen (18) years of age, or those over eighteen (18) years of age, if physically or mentally incapacitated from earning, shall prima facie be considered dependent.*

(c) **Actual Dependents.** *Wife, husband, child, mother, father, grandparent, sister, brother, mother-in-law, father-in-law, who were wholly supported by the deceased employee at the time of death and for a reasonable period of time immediately prior to the time of death, shall be considered actual dependents, and payment of compensation shall be made in the order named.*

(d) **Partial Dependents.** *Any member of a class named in subsection (c) who regularly derived part of the member's support from the wages of the deceased employee at the time of death and for a reasonable period of time immediately prior to the time of death shall be considered a partial dependent, and payment of compensation shall be made to the dependents in the order named.*

(e) **Compensation in Death Cases.** *In death cases, compensation payable to dependents shall be computed on the following basis, and shall be paid to the persons entitled to compensation, without administration:*

(1) **Surviving Spouse and No Dependent Child.** *If the deceased employee leaves a surviving spouse and no dependent child, there shall be paid to the surviving spouse fifty percent (50%) of the average weekly wages of the deceased.*

(2) **Surviving Spouse and Children.** *If the deceased employee leaves a surviving spouse and one (1) or more dependent children, there shall be paid to the surviving spouse for the benefit of the surviving spouse and the child or children, sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages of the deceased.*

(3) **Surviving Spouse and Children, How Paid.** *In all cases where compensation is payable to a surviving spouse for the benefit of the surviving spouse and dependent child or children, the court shall have the power to determine in its discretion what portion of the compensation shall be applied for the benefit of any child or children, and may order the compensation paid to a guardian.*

(4) **Remarriage of Surviving Spouse.** *Upon the remarriage of a surviving spouse, if there is no child of the deceased employee, the compensation shall terminate; but if there is a child or children under eighteen (18) years of age, or over eighteen (18) years of age if physically or mentally incapacitated from earning, from the time of the remarriage the child or children shall have status of orphan or orphans, and draw compensation accordingly, not, however, to exceed sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages of the deceased.*

(5) **Dependent Orphans.** *If the deceased employee leaves one (1) dependent orphan, there shall be paid fifty percent (50%) of the average weekly wages of the deceased; if the deceased leaves two (2) or more dependent orphans, there shall be paid sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the average weekly wages of the deceased.*

(6) **Parent or Parents.** *If the deceased employee leaves no surviving spouse or child entitled to any payment under this section, but should leave a parent or parents, either or both of whom are wholly dependent on the deceased, there shall be paid, if only one (1) parent, twenty-five percent (25%) of the average weekly wages of the deceased to the parent, and if both parents, thirty-five percent (35%) of the average weekly wages of the deceased to the parents.*

(7) **Grandparent, Brother, Sister, Mother-in-law or Father-in-law.** *If the deceased leaves no surviving spouse or dependent child or parent entitled to any payment under this section, but leaves a grandparent, brother, sister, mother-in-law or father-in-law wholly dependent upon the deceased for support, there shall be paid to the dependent, if only one (1), twenty percent (20%) of the average weekly wages of the deceased, or, if more than one (1), twenty-five percent (25%) of the average weekly wages of the deceased, divided between them or among them share and share alike.*

(8) **Compensation to Dependents to Cease upon Death or Marriage.** *If compensation is being paid under this chapter to any dependent, the compensation shall cease, upon the death or marriage of the dependent, unless otherwise provided in this section.*

(9) **Partial Dependents to Receive Proportion.** *Partial dependents shall be entitled to receive only that proportion of the benefits provided for actual dependents that the average amount of the wages regularly contributed by the deceased to the partial dependent at the time of, and for a reasonable time immediately prior to, the injury, bore to the total income of the dependent during the same time.*

(10) **Maximum and Minimum Compensation.** *The compensation payable in case of death to persons wholly dependent shall be subject to the maximum weekly benefit and minimum weekly benefit; provided, that if at the time of injury the employee receives wages of less than the minimum weekly benefit, the compensation shall be the full amount of the wages a week, but in no event shall the compensation payable under this provision be less than the minimum weekly benefit. The compensation payable to partial*

*dependents shall be subject to the same maximum and minimum specified in this subdivision (e)(10); provided, that if the income loss of the partial dependents by the death is less than the minimum weekly benefit, then the dependents shall receive the full amount of the income loss. This compensation shall be paid during dependency not to exceed the maximum total benefit, payments to be paid at the intervals when the wage was payable, as nearly as may be.*

**(11) Orphans and Other Children.** *In computing and paying compensation to orphans or other children, in all cases, only those under eighteen (18) years of age, or those over eighteen (18) years of age who are physically or mentally incapacitated from earning, shall be included, the former to receive compensation only during the time they are under eighteen (18) years of age, the latter only for the time they are so incapacitated. If the dependent is attending a recognized educational institution, benefits shall be paid until twenty-two (22) years of age.*

**(12) Actual Dependents.** *Actual dependents shall be entitled to take compensation in the order named in subsection (c), until sixty-six and two-thirds percent (66⅔%) of the monthly wages of the deceased during the time specified in this chapter have been exhausted, but the total compensation to be paid to all actual dependents of a deceased employee shall not exceed in the aggregate the maximum weekly benefit.*

**(13) Dependency Status Not Affected by Certain Assistance Payments.** *Sums distributed under the Employment Security Law, compiled in chapter 7 of this title; the Old-Age Assistance Law, compiled in title 71, chapter 2, part 2; the Aid to Dependent Children Law, compiled in title 71, chapter 3, part 1; Aid to Blind Law, compiled in title 71, chapter 4, part 1; the federal Social Security Act, compiled in 42 U.S.C. § 301 et seq., or any other public assistance distributed by the United States government, the state, or any county or municipality of the state, shall not be considered income within the meaning of this law and shall not affect the status or compensation of any person entitled to benefits as provided in this chapter.*

**(f)(1)(A)** *If compensation is payable due to the death of an employee under this chapter, and the decedent leaves an alien dependent or dependents residing outside of the United States, a workers' compensation mediator is authorized to conduct alternative dispute resolution proceedings to attempt to resolve the issues; provided, that a representative or representatives of the employer and a duly authorized representative or representatives of the consul or other representative of the foreign country in which the dependent or dependents reside are present. If the parties reach a settlement agreement, the administrator or administrator's designee is authorized to approve the settlement, and the order of the administrator or the administrator's designee shall be entitled to the same standing as a judgment of a court of record for all purposes. If the parties are unable to reach an agreement, the employer or employee's representative may seek relief pursuant to § 50-6-239 following the issuance of a dispute certification notice.*

**(B)** *The administrator, or administrator's designee, or the court shall order payment of any compensation due from the employer to be made to the duly accredited consular officer of the country where the beneficiaries are citizens. The consular officer or the consular officer's representative shall be fully authorized and empowered by this law to settle all claims for compensation and to receive the compensation for distribution to the*

*persons entitled to the compensation.*

*(2) The distribution of funds in cases described in subdivision (f)(1)(A) shall be made only upon the order of the administrator, the administrator's designee, or the court that heard the matter. If required to do so by the administrator, the administrator's designee, or the court, the consular officer or the consular officer's representative shall execute a good and sufficient bond to be approved by the administrator, the administrator's designee, or the court, conditioned upon the faithful accounting of the moneys so received by the consular officer or the consular officer's representative. Before the bond is discharged, a verified statement of receipts and disbursements of the moneys shall be made and filed with the administrator or the court, as appropriate.*

*(3) The consular officer or the consular officer's representative shall, before receiving the first payment of the compensation, and at reasonable times thereafter, upon the request of the employer, furnish to the employer a sworn statement containing a list of the dependents with the name, age, residence, extent of dependency and relation to the deceased of each dependent.*

**50-6-212. Hernia or rupture. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) In all claims for compensation for hernia or rupture, resulting from injury by accident arising out of and in the course of the employee's employment, it must be definitely proven to the satisfaction of the court that:

- (1) There was an injury resulting in hernia or rupture;
- (2) The hernia or rupture appeared suddenly;
- (3) It was accompanied by pain;
- (4) The hernia or rupture immediately followed the accident; and
- (5) The hernia or rupture did not exist prior to the accident for which compensation is claimed.

(b) All hernia or rupture, inguinal, femoral or otherwise, so proven to be the result of an injury by accident arising out of and in the course of the employment, shall be treated in a surgical manner by a radical operation. If death results from the operation, the death shall be considered as the result of the injury, and compensation paid in accordance with this chapter.

(c)(1) In case the injured employee refuses to undergo the radical operation for the cure of the hernia or rupture, no compensation will be allowed during the time the refusal continues.

(2) If, however, it is shown that the employee has some chronic disease, or is otherwise in such physical condition that the court finds it unsafe for the employee to undergo the operation, the employee shall be paid compensation in accordance with this chapter.

**50-6-212. Hernia or rupture. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) In all claims for compensation for hernia or rupture, resulting from injury by accident arising primarily out of and in the course and scope of the employee's employment, it must be definitely proven to the satisfaction of the court that:*

- (1) There was an injury resulting in hernia or rupture;*
- (2) The hernia or rupture appeared suddenly;*
- (3) It was accompanied by pain;*

*(4) The hernia or rupture immediately followed the accident; and*

*(5) The hernia or rupture did not exist prior to the accident for which compensation is claimed.*

*(b) All hernia or rupture, inguinal, femoral or otherwise, so proven to be the result of an injury by accident arising primarily out of and in the course and scope of the employment, shall be treated in a surgical manner by a radical operation. If death results from the operation, the death shall be considered as the result of the injury, and compensation paid in accordance with this chapter.*

*(c)(1) In case the injured employee refuses to undergo the radical operation for the cure of the hernia or rupture, no compensation will be allowed during the time the refusal continues.*

*(2) If, however, it is shown that the employee has some chronic disease, or is otherwise in such physical condition that the court finds it unsafe for the employee to undergo the operation, the employee shall be paid compensation in accordance with this chapter.*

**50-6-214. Responsibility for payment benefits and loss adjustment expenses between insurance carrier and self-insured employer. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) The commissioner or the commissioner's designee shall order appropriate workers' compensation benefits and loss adjustment expenses associated with the claim to be paid on an equal basis by the insurance carrier or carriers and the self-insured employer, as appropriate, in any case where:

(1)(A) An employer changes insurance carriers;

(B) The employer having been self-insured, becomes insured; or

(C) The employer having been insured, is approved to be self-insured;

and

(2) One (1) of the following applies:

(A) The compensability of the claim is not being disputed by the employer or carrier; or

(B) A workers' compensation specialist has determined the claim to be compensable or ordered the provision of benefits to an employee; and

(3) There is a dispute as to which entity is responsible to provide workers' compensation benefits to a worker.

(b) Upon an agreement by the parties or a court order as to which entity is responsible to pay the workers' compensation benefits to the employee, the entity responsible for the provision of workers' compensation benefits shall reimburse the other entity all moneys paid for or on behalf of the employee as ordered by the commissioner or the commissioner's designee, plus interest from the date of payment at the rate set by § 47-14-121.

**50-6-214. Responsibility for payment benefits and loss adjustment expenses between insurance carrier and self-insured employer. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) The administrator or the administrator's designee shall order appropriate workers' compensation benefits and loss adjustment expenses associated with the claim to be paid on an equal basis by the insurance carrier or carriers and the self-insured employer, as appropriate, in any case where:*

- (1)(A) *An employer changes insurance carriers;*
  - (B) *The employer having been self-insured, becomes insured; or*
  - (C) *The employer having been insured, is approved to be self-insured;*
- and*

(2) *One (1) of the following applies:*

(A) *The compensability of the claim is not being disputed by the employer or carrier; or*

(B) *A workers' compensation judge has determined the claim to be compensable or ordered the provision of benefits to an employee; and*

(3) *There is a dispute as to which entity is responsible to provide workers' compensation benefits to a worker.*

(b) *Upon an agreement by the parties or a court order as to which entity is responsible to pay the workers' compensation benefits to the employee, the entity responsible for the provision of workers' compensation benefits shall reimburse the other entity all moneys paid for or on behalf of the employee as ordered by the administrator or the administrator's designee, plus interest from the date of payment at the rate set by § 47-14-121.*

**50-6-216. Ombudsman program. [Effective on July 1, 2014.]**

(a) *The administrator shall establish a workers' compensation ombudsman program to assist injured or disabled employees, persons claiming death benefits, employers, and other persons in protecting their rights, resolving disputes, and obtaining information available under workers' compensation laws. The ombudsman program shall be available only to those individuals or organizations that are not represented by an attorney in the claim for workers' compensation benefits.*

(b) *No statement, discussion, evidence, allegation or other matter of legal significance that occurs in the presence of an ombudsman shall be admissible as evidence in any other proceeding.*

(c) *The administrator may adopt rules and regulations consistent with this chapter in order to fulfill the purposes of this section in an orderly and efficient manner.*

(d) *The division shall have authority to assess a civil penalty against any person or organization, with the exception of the state or a representative of the state, that refuses to cooperate with the services provided by an ombudsman as provided in § 50-6-118.*

**50-6-217. Appointment of judges on the workers' compensation appeals board. [Effective on July 1, 2014.]**

(a)(1) *The governor shall appoint three (3) qualified individuals to serve as judges on the workers' compensation appeals board. Each individual selected shall be a Tennessee licensed attorney, with at least seven (7) years' experience in workers' compensation matters, shall be at least thirty (30) years of age, and shall be required to attend annual training on workers' compensation laws.*

(2) *Upon appointment, each judge of the workers' compensation appeals board shall serve a term of six (6) years and may be reappointed for an additional term by the governor upon expiration of the initial term. No judge appointed to the workers' compensation appeals board shall serve more than two (2) full terms, and service of more than half of a six (6) year term shall*

*constitute service of one (1) full term. Any judge appointed to the workers' compensation appeals board to serve less than a full term to fill a vacancy created by the removal or resignation of a judge sitting on the workers' compensation appeals board shall be eligible to serve an additional two (2) full terms. In the initial appointment of judges to the workers' compensation appeals board, one (1) judge appointed shall serve a term of two (2) years, one (1) judge appointed shall serve a term of four (4) years, and one (1) judge appointed shall serve a term of six (6) years.*

*(3) The governor shall have authority to remove a judge sitting on the workers' compensation appeals board during an unexpired term for the commission of any of the judicial offenses provided in § 17-5-302.*

*(4) Any person appointed to serve as a judge on the workers' compensation appeals board shall be required to take an oath or affirmation to support the constitutions of the United States and of this state, and to administer justice without respect of persons, and impartially to discharge all the duties incumbent upon a judge to the best of the judge's skill and ability. The oath may be taken before another workers' compensation judge, any inferior court judge, a retired judge, a retired chancellor or an active or retired judge of the court of general sessions.*

*(5) No person appointed to serve as a judge on the workers' compensation appeals board shall practice law, or perform any of the functions of attorney or counsel, in any of the courts of this state, except in cases in which the judge may have been employed as counsel previous to the appointment as a judge on the workers' compensation appeals board. A newly appointed judge on the workers' compensation appeals board can practice law only in an effort to wind up the judge's practice and must end the practice of law as soon as reasonably possible and in no event longer than one hundred eighty (180) days after assuming the position of judge on the board of administrative review.*

**50-6-218. Education and training program for workers' compensation mediators, judges, chief judge, ombudsman and judges of the workers' compensation appeals board. [Effective on July 1, 2014.]**

*The administrator shall institute and maintain an education and training program for workers' compensation mediators, workers' compensation judges, the chief judge, ombudsmen, and the judges of the workers' compensation appeals board in order to assure that these persons maintain current and appropriate skills and knowledge in performing their duties. Before assuming their duties, all persons selected to serve or appointed as workers' compensation mediators, workers' compensation judges, the chief judge, ombudsmen, or as judge of the workers' compensation appeals board shall be provided formal training and education, which shall include training on the department's workers' compensation system, the Tennessee workers' compensation statutes and case law, and the rules and regulations of the division of workers' compensation. In addition, such persons shall attend at least seven (7) hours of training each year that is focused on workers' compensation statutes and case law, and the rules and regulations of the division of workers' compensation.*

**50-6-219. Workers' compensation appeals board. [Effective on July 1, 2014.]**

*(a) The administrator shall establish a workers' compensation appeals board, which shall be wholly separate from the court of workers' compensation claims, to review interlocutory and final orders entered by workers' compensation judges upon application of any party to a workers' compensation claim.*

*(1) Any party aggrieved by an order for temporary disability or medical benefits or an order either awarding permanent disability or medical benefits or denying a claim for permanent disability or medical benefits issued by a workers' compensation judge may request review of the order by the workers' compensation appeals board by filing a request for appeal, on a form prescribed by the administrator. Review shall be accomplished in the following manner:*

*(A) Within seven (7) business days after issuance of an interlocutory order for temporary disability or medical benefits by a workers' compensation judge, either party may request an appeal of the decision. Within seven (7) business days of receiving an appeal of an interlocutory order, the workers' compensation appeals board shall enter an order affirming, reversing, remanding, or modifying the decision of the workers' compensation judge. The workers' compensation appeals board's decision on an appeal of an interlocutory order shall not be subject to further review.*

*(B) Within thirty (30) calendar days after issuance of a compensation order pursuant to § 50-6-239(c)(2), either party may request an appeal of the decision by filing a notice of appeal with the workers' compensation appeals board. Parties shall have fifteen (15) calendar days after an appeal is filed to file briefs with the workers' compensation appeals board. Within forty-five (45) calendar days after receiving an appeal of a compensation order, the workers' compensation appeals board shall issue a decision either affirming the judgment and certifying the workers' compensation judge's order as final or remanding the case. If judgment is affirmed, the final order of the workers' compensation judge shall be immediately appealable to the state supreme court. If a request for administrative review is timely filed, the order issued by the workers' compensation judge shall not become final, as provided in § 50-6-239(c)(7), until the workers' compensation appeals board issues a written decision certifying the order as a final order.*

*(2) The workers' compensation appeals board may remand the decision of the workers' compensation judge, if the rights of the party seeking review have been prejudiced because findings, inferences, conclusions, or decisions of a workers' compensation judge:*

- (A) Violate constitutional or statutory provisions;*
- (B) Exceed the statutory authority of the workers' compensation judge;*
- (C) Do not comply with lawful procedure;*
- (D) Are arbitrary, capricious, characterized by abuse of discretion, or clearly unwarranted exercise of discretion; or*
- (E) Are not supported by evidence that is both substantial and material in the light of the entire record.*

*(b) This section shall have no effect on the procedures established for filing a claim for workers' compensation benefits in the division of claims administration, pursuant to § 9-8-402, or in the claims commission, pursuant to § 9-8-307. The workers' compensation appeals board shall have no jurisdiction over*

*an appeal of a decision of a commissioner of the claims commission.*

*(c) The decisions of the workers' compensation appeals board shall not be subject to judicial review pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.*

**50-6-224. Limitation of actions. [Effective until July 1, 2014.]**

(a) The time within which the following acts shall be performed under this chapter shall be limited to the following periods, respectively:

(1) Actions or proceedings by an injured employee to determine or recover compensation: one (1) year after the occurrence of the injury, except as provided in § 50-6-203;

(2) Actions or proceedings by dependents to determine or recover compensation: one (1) year after the date of notice in writing given by the employer to the division of workers' compensation, stating the employer's willingness to pay compensation when it is shown that the death is one for which compensation is payable. In case the deceased was a native of a foreign country and leaves no known dependent or dependents within the United States, it shall be the duty of the commissioner to give written notice forthwith of the death to the consul or other representative of the foreign country residing within the state;

(3) Proceedings to obtain judgment in case of default of employer for thirty (30) days to pay any compensation due under any settlement or determination: one (1) year after the default; and

(4) In case of physical or mental incapacity, other than minority, of the injured person or the injured person's dependents to perform or cause to be performed any act required within the time in this section specified: the period of limitation in those cases shall be extended for one (1) year from the date when the incapacity ceases.

(b) This section applies only to injuries that arise on or before December 31, 2004, and shall have no applicability to injuries that arise on or after January 1, 2005.

**50-6-225. Submission of claim to court upon failure to agree on compensation — Special workers' compensation appeals panel — Impasse. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a)(1) Notwithstanding any provisions of this chapter to the contrary, in case of a dispute over or failure to agree upon compensation under this chapter, between the employer and employee or the dependent or dependents of the employee, the parties shall first submit the dispute to the benefit review conference process provided by the division of workers' compensation.

(2)(A) In the event the parties are unable to reach an agreement at the benefit review conference as to all issues related to the claim or the benefit review conference process is otherwise exhausted pursuant to rules promulgated by the commissioner, either party may file a civil action as provided in § 50-6-203 in the circuit or chancery court in the county in which the employee resided at the time of the alleged injury or in which the alleged injury occurred. In instances where the employee resides outside of the state and where the injury occurs outside of the state, the complaint shall be filed in any county where the employer maintains an

office.

(B) If the parties are unable to reach an agreement at the benefit review conference as to all issues related to the claim or the benefit review conference process is otherwise exhausted pursuant to rules promulgated by the commissioner, and if the employer is a county or a municipal corporation that has accepted the provisions of this chapter, either party may file a civil action in the county in which the governmental entity is located or in the county in which the incident occurred from which the civil action arises.

(3) Neither party in a civil action filed pursuant to this section shall have the right to demand a jury.

(b) The Tennessee Rules of Civil Procedure and the Tennessee Rules of Evidence apply to all civil actions filed pursuant to this section.

(c) Unless required to be filed by an earlier date as a result of discovery requests pursuant to the Tennessee Rules of Civil Procedure, within sixty (60) days after the filing of an answer in an action under this section, the employer shall file with the court a wage statement detailing the employee's wages for the previous fifty-two (52) weeks, unless the employer stipulates that the maximum weekly workers' compensation rate applies in the particular action.

(d) Whenever any civil action is brought pursuant to this section, the judge or chancellor may, if the judge or chancellor so desires, visit the scene of the accident and examine the surroundings.

(e)(1) Any party to the proceedings in the circuit or chancery court may, if dissatisfied or aggrieved by the judgment or decree of that court, appeal to the supreme court, where the cause shall be heard and determined as provided in the Tennessee Rules of Appellate Procedure.

(2) Review of the trial court's findings of fact shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise.

(3) The supreme court may, by order, refer workers' compensation cases to a panel known as the special workers' compensation appeals panel. This panel shall consist of three (3) judges designated by the chief justice, at least one (1) of whom shall be a member of the supreme court.

(4) Any case that the supreme court by order or rule refers to the special workers' compensation appeals panel shall be briefed, and oral argument shall be heard pursuant to the Tennessee Rules of Appellate Procedure as if the appeal were being heard by the entire supreme court.

(5)(A) The special workers' compensation appeals panel shall reduce to writing its findings and conclusions in all cases. The decision of the panel shall become the judgment of the supreme court thirty (30) days after it is issued unless:

(i) Any member of the supreme court files with the clerk a written request within the thirty-day period that the case be heard by the entire supreme court, in which event a final judgment will not be entered until the supreme court, after due consideration of the case, enters final judgment; or

(ii) Any party to the appeal files a motion requesting review by the entire supreme court within fifteen (15) days after issuance of the decision by the panel, in which event a final judgment will not be entered:

(a) Until the motion is denied; or

(b) If the motion is granted, until the supreme court enters final judgment after its consideration of the case.

(B) For purposes of this subsection (e), a decision of the panel shall be deemed to be issued on the day it is mailed to the parties, which date shall be noted on the decision by the clerk. Section 27-1-122 applies to all motions made pursuant to this subsection (e).

(6) If the entire supreme court, on its own motion or after granting the motion of a party, reviews an opinion of the special workers' compensation appeals panel, its review will be limited to the record and the briefs on file before the special workers' compensation appeals panel; provided, that the supreme court may, in its discretion, order the parties to further brief the issues or appear at oral argument.

(f) The trial of all cases under this chapter shall be expedited by:

(1) Giving the cases priority over all cases on the trial and appellate dockets; and

(2) Allowing any case on appeal in the supreme court to be on motion of either party transferred to the division where the supreme court is then or will next be in session.

(g)(1) If the judgment or decree of a court is appealed pursuant to subsection (e), interest on the judgment or decree shall be computed from the date that the judgment or decree is entered by the trial court at an annual rate of interest five (5) percentage points above the average prime loan rate for the most recent week for which such an average rate has been published by the board of governors of the federal reserve system on the total judgment awarded by the supreme court. For purposes of calculating the accrual of interest pursuant to this subdivision (g)(1), the average prime loan rate on the day the judgment or decree is entered by the trial court shall be used.

(2) Total judgment awarded is computed by the total number of weeks multiplied by the benefit rate without any reduction.

(3) For purposes of determining the amount of interest that has accrued on a judgment or decree, the commissioner of financial institutions shall maintain a listing of the average prime loan rate as it becomes available each month, and the commissioner of financial institutions shall respond to inquiries concerning what the average prime rate was on a given month and year. If the person making the inquiry so requests, the commissioner shall send the person a letter certifying what the average prime rate was on the month and year requested. The commissioner is authorized to charge a reasonable fee not to exceed ten dollars (\$10.00) for preparing and sending the letter.

(4) For purposes of this subsection (g), "judgment" and "decree" includes any discretionary costs awarded pursuant to this chapter.

(h) When a reviewing court determines pursuant to motion or sua sponte that the appeal of an employer or insurer is frivolous, or taken for purposes of delay, a penalty may be assessed by the court, without remand, against the appellant for a liquidated amount.

(i) When a reviewing court determines pursuant to motion or sua sponte that the appeal of an employee is frivolous, a penalty may be assessed by the court, without remand, against the appellant for a liquidated amount.

(j) If an employer wrongfully fails to pay an employee's claim for temporary total disability payments, the employer shall be liable, in the discretion of the court, to pay the employee, in addition to the amount due for temporary total

disability payments, a sum not exceeding twenty-five percent (25%) of the temporary total disability claim; provided, that it is made to appear to the court that the refusal to pay the claim was not in good faith and that the failure to pay inflicted additional expense, loss or injury upon the employee; and provided, further, that the additional liability shall be measured by the additional expense thus entailed.

(k) If, on request by the specialist, a party fails to produce documents, to cooperate in scheduling a conference or to provide a representative authorized to settle a matter in attendance at a conference, then a specialist may declare an impasse and file the report on unresolved issues with a court. On the motion of either party or on the court's own motion, a court is authorized, but not required, to hold a hearing on the failure to produce documents requested by the specialist, to cooperate in scheduling or to provide a representative who possessed settlement authority. If the court determines that the failure lacked good cause or resulted from bad faith, then the court may assess the offending party who failed to take the requested action with attorney's fees and costs related only to the trial. The commissioner is authorized to promulgate rules to effectuate the purposes of this subsection (k) in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(l) If an employee receives a settlement, judgment or decree under this chapter that includes the payment of medical expenses and the employer or workers' compensation carrier wrongfully fails to reimburse an employee for any medical expenses actually paid by the employee within sixty (60) days of the settlement, judgment or decree, or fails to provide reasonable and necessary medical expenses and treatment, including failure to reimburse for reasonable and necessary medical expenses, in bad faith after receiving reasonable notice of their obligation to provide the medical treatment, the employer or workers' compensation carrier shall be liable, in the discretion of the court, to pay the employee, in addition to the amount due for medical expenses paid, a sum not exceeding twenty-five percent (25%) of the expenses; provided, that it is made to appear to the court that the refusal to pay the claim was not in good faith and that the failure to pay inflicted additional expense, loss or injury upon the employee.

**50-6-225. Appeal if dissatisfied or aggrieved by judgment. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a)(1) Any party to the proceedings in the court of workers' compensation claims may, if dissatisfied or aggrieved by the judgment of that court, appeal to the supreme court, where the cause shall be heard and determined as provided in the Tennessee Rules of Appellate Procedure.*

*(2) Review of the workers' compensation court's findings of fact shall be de novo upon the record of the workers' compensation court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise.*

*(3) The supreme court may, by order, refer workers' compensation cases to a panel known as the special workers' compensation appeals panel. This panel shall consist of three (3) judges designated by the chief justice, at least one (1) of whom shall be a member of the supreme court.*

*(4) Any case that the supreme court by order or rule refers to the special workers' compensation appeals panel shall be briefed, and oral argument shall be heard pursuant to the Tennessee Rules of Appellate Procedure as if*

*the appeal were being heard by the entire supreme court.*

*(5)(A) The special workers' compensation appeals panel shall reduce to writing its findings and conclusions in all cases. The decision of the panel shall become the judgment of the supreme court thirty (30) days after it is issued unless:*

*(i) Any member of the supreme court files with the clerk a written request within the thirty-day period that the case be heard by the entire supreme court, in which event a final judgment will not be entered until the supreme court, after due consideration of the case, enters final judgment; or*

*(ii) Any party to the appeal files a motion requesting review by the entire supreme court within fifteen (15) days after issuance of the decision by the panel, in which event a final judgment will not be entered:*

*(a) Until the motion is denied; or*

*(b) If the motion is granted, until the supreme court enters final judgment after its consideration of the case.*

*(B) For purposes of this subsection (a), a decision of the panel shall be deemed to be issued on the day it is mailed to the parties, which date shall be noted on the decision by the clerk. Section 27-1-122 applies to all motions made pursuant to this subsection (a).*

*(b) Appeal of all cases under this chapter shall be expedited by:*

*(1) Giving the cases priority over all cases on the appellate dockets; and*

*(2) Allowing any case on appeal in the supreme court to be on motion of either party transferred to the division where the supreme court is then or will next be in session.*

*(c)(1) If the judgment or decree is appealed pursuant to subsection (a), interest on the judgment or decree shall be computed from the date that the judgment is entered by the court of workers' compensation claims at an annual rate as defined in § 47-14-121. For purposes of calculating the accrual of interest pursuant to this subdivision (c)(1), the average prime loan rate on the day the judgment or decree is entered by the trial court shall be used.*

*(2) Total judgment awarded is computed by the total number of weeks multiplied by the benefit rate without any reduction.*

*(d) When a reviewing court determines pursuant to motion or sua sponte that the appeal of an employer or insurer is frivolous, or taken for purposes of delay, a penalty may be assessed by the court, without remand, against the appellant for a liquidated amount.*

*(e) When a reviewing court determines pursuant to motion or sua sponte that the appeal of an employee is frivolous, a penalty may be assessed by the court, without remand, against the appellant for a liquidated amount.*

**50-6-226. Fees of attorneys and physicians, and hospital charges.**  
**[Effective until July 1, 2014. See the version effective on**  
**July 1, 2014.]**

*(a)(1) The fees of attorneys for services to employees under this chapter, shall be subject to the approval of the commissioner or the court before which the matter is pending, as appropriate; provided, that no attorney's fees to be charged employees shall be in excess of twenty percent (20%) of the amount of the recovery or award to be paid by the party employing the attorney. All*

attorney's fees for attorneys representing employers shall be subject to review for reasonableness of the fee and shall be subject to approval by a court when the fee exceeds ten thousand dollars (\$10,000).

(2)(A) Medical costs that have been voluntarily paid by the employer or its insurer shall not be included in determining the award for purposes of calculating the attorney's fee.

(B) For cases submitted to the department for approval pursuant to § 50-6-206(c) that are resolved prior to trial or pursuant to a benefit review conference, the department shall deem the attorney's fee to be reasonable if the fee does not exceed twenty percent (20%) of the award to the injured worker, or, in cases governed by § 50-6-207(4), twenty percent (20%) of the first four hundred (400) weeks of the award.

(C) In cases that proceed to trial, an employee's attorney shall file an application for approval of a proposed attorney's fee. Where the award of an attorney's fee exceeds ten thousand dollars (\$10,000), the court shall make specific findings as to the factors that justify the fee as provided in Tennessee Supreme Court Rule 8, RPC 1.5.

(D) The final order or settlement in all workers' compensation cases shall set out the attorney portion of the award in both dollar and percentage terms and the required findings.

(3) In accident cases that result in death of an employee, the plaintiff's attorney's fees shall not exceed reasonable payment for actual time and expenses incurred when the employer makes a voluntary settlement offer in writing to dependents or survivors eligible under § 50-6-210 within thirty (30) days of the employee's death if the employer offers to provide the dependents or survivors with all the benefits provided under this chapter. The approving authority shall review and approve the settlements on an expedited basis.

(4) The fees of physicians and charges of hospitals for services to employees under this chapter, shall be subject to the approval of the commissioner or the court before which the matter is pending, as appropriate, as provided in this subdivision (a)(4). Unless a medical fee or charge is contested, the department shall deem it to be reasonable. If a fee or charge is contested, the department shall permit a party to seek review only of the contested fee or charge in any court with jurisdiction to hear a matter pursuant to § 50-6-225. A court may review the case solely for the purpose of approving the fees and charges that are reasonable.

(b) The charging or receiving of any fee by an attorney in violation of subsection (a) shall be deemed unlawful practice and render the attorney liable to disbarment; and, further, the attorney shall forfeit double the entire amount retained by the attorney, to be recovered as in case of debt by the injured person or the injured person's creditor.

(c)(1) The fees charged to the claimant by the treating physician or a specialist to whom the employee was referred for giving testimony by oral deposition relative to the claim shall, unless the interests of justice require otherwise, be considered a part of the costs of the case, to be charged against the employer when the employee is the prevailing party.

(2) The trial judge shall have the discretion to determine the reasonableness of the fee charged by any physician pursuant to this subsection (c).

(3) This subsection (c) apply only to workers' compensation actions arising on or after July 1, 1988.

**50-6-226. Fees of attorneys and physicians, and hospital charges.**  
**[Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a)(1) The fees of attorneys for services to employees under this chapter, shall be subject to the approval of the workers' compensation judge before which the matter is pending, as appropriate; provided, that no attorney's fees to be charged employees shall be in excess of twenty percent (20%) of the amount of the recovery or award to be paid by the party employing the attorney. The department shall deem the attorney's fee to be reasonable if the fee does not exceed twenty percent (20%) of the award to the injured worker, or, in cases governed by § 50-6-207(4), twenty percent (20%) of the first four hundred fifty (450) weeks of the award. All attorney's fees for attorneys representing employers shall be subject to review for reasonableness of the fee and shall be subject to approval by a workers' compensation judge when the fee exceeds ten thousand dollars (\$10,000).*

*(2)(A) Medical costs that have been voluntarily paid by the employer or its insurer shall not be included in determining the award for purposes of calculating the attorney's fee.*

*(B) [Deleted by 2013 amendment, effective July 1, 2014.]*

*(C) In cases that proceed to trial, an employee's attorney shall file an application for approval of a proposed attorney's fee. Where the award of an attorney's fee exceeds ten thousand dollars (\$10,000), the court shall make specific findings as to the factors that justify the fee as provided in Tennessee Supreme Court Rule 8, RPC 1.5.*

*(D) The final order or settlement in all workers' compensation cases shall set out the attorney portion of the award in both dollar and percentage terms and the required findings.*

*(3) In accident cases that result in death of an employee, the plaintiff's attorney's fees shall not exceed reasonable payment for actual time and expenses incurred when the employer makes a voluntary settlement offer in writing to dependents or survivors eligible under § 50-6-210 within thirty (30) days of the employee's death if the employer offers to provide the dependents or survivors with all the benefits provided under this chapter. The approving authority shall review and approve the settlements on an expedited basis.*

*(4) The fees of physicians and charges of hospitals for services to employees under this chapter, shall be subject to the approval of the administrator or the court before which the matter is pending, as appropriate, as provided in this subdivision (a)(4). Unless a medical fee or charge is contested, the department shall deem it to be reasonable. If a fee or charge is contested, the department shall permit a party to seek review only of the contested fee or charge in any court with jurisdiction to hear a matter pursuant to § 50-6-225. A court may review the case solely for the purpose of approving the fees and charges that are reasonable.*

*(b) The charging or receiving of any fee by an attorney in violation of subsection (a) shall be deemed unlawful practice and render the attorney liable to disbarment; and, further, the attorney shall forfeit double the entire amount retained by the attorney, to be recovered as in case of debt by the injured person or the injured person's creditor.*

*(c)(1) The fees charged to the claimant by the treating physician or a specialist to whom the employee was referred for giving testimony by oral*

*deposition relative to the claim shall, unless the interests of justice require otherwise, be considered a part of the costs of the case, to be charged against the employer when the employee is the prevailing party.*

*(2) The workers' compensation judge shall have the discretion to determine the reasonableness of the fee charged by any physician pursuant to this subsection (c).*

*(3) This subsection (c) applies only to workers' compensation actions arising on or after July 1, 1988.*

*(d) In addition to any attorneys' fees provided for in this section, the court of workers' compensation claims may award attorneys' fees and reasonable costs, including reasonable and necessary court reporter expenses and expert witness fees for depositions and trials incurred when the employer fails to furnish appropriate medical, surgical and dental treatment or care, medicine, medical and surgical supplies, crutches, artificial members and other apparatus to an employee provided for in a settlement or judgment under this chapter.*

*(e) A health care provider shall not employ a collection agency or make a report to a credit bureau concerning a private claim against an employer for all or part of the costs of medical care provided to an employee that are not paid by the employer's workers' compensation insurer without having first given notice of the dispute to the medical payment committee. The medical director may include the insurer in the administrative process.*

**50-6-227. Alien dependents of deceased employee — Payment to consular officer or representative — Bond — List of dependents. [Effective until July 1, 2014.]**

(a)(1)(A) In the event compensation is payable due to the death of an employee under this chapter, and the decedent leaves an alien dependent or dependents residing outside of the United States, a workers' compensation specialist is authorized to conduct a benefit review conference to attempt to resolve the issues; provided, that a representative or representatives of the employer and a duly authorized representative or representatives of the consul or other representative of the foreign country in which the dependent or dependents resides are present. In the event a settlement agreement is reached, the commissioner or commissioner's designee is authorized to approve the settlement, and the order of the commissioner or the commissioner's designee shall be entitled to the same standing as a judgment of a court of record for all purposes. In the event the parties are unable to reach an agreement at the benefit review conference, the employer or employee's representative may file a complaint in the circuit or chancery court that would have jurisdiction of the matter pursuant to § 50-6-225 requesting the court to hear and determine the matter.

(B) The commissioner, or commissioner's designee, or the court shall order payment of any compensation due from the employer to be made to the duly accredited consular officer of the country of which the beneficiaries are citizens. The consular officer or the consular officer's representative shall be fully authorized and empowered by this law to settle all claims for compensation and to receive the compensation for distribution to the persons entitled to the compensation.

(2) The distribution of funds in cases described in subdivision (a)(1) shall be made only upon the order of the commissioner, the commissioner's

designee, or the court that heard the matter. If required to do so by the commissioner, the commissioner's designee, or the court, the consular officer or the consular officer's representative shall execute a good and sufficient bond to be approved by the commissioner, the commissioner's designee, or the court, conditioned upon the faithful accounting of the moneys so received by the consular officer or the consular officer's representative. Before the bond is discharged a verified statement of receipts and disbursements of the moneys shall be made and filed with the commissioner or the court, as appropriate.

(b) The consular officer or the consular officer's representative shall, before receiving the first payment of the compensation, and at reasonable times thereafter, upon the request of the employer, furnish to the employer a sworn statement containing a list of the dependents with the name, age, residence, extent of dependency and relation to the deceased of each dependent.

**50-6-228. Copies of settlements and releases — Filing. [Effective until July 1, 2014.]**

Copies of all settlements and releases shall be filed by the employer with the division of workers' compensation, within ten (10) days after the settlements are made, and shall become part of the permanent records of the division.

**50-6-229. Commutation to lump sum payment with consent of court. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) The amounts of compensation payable periodically under this chapter may be commuted to one (1) or more lump sum payments. These may be commuted upon motion of any party subject to the approval of the circuit, chancery or criminal court. No agreed stipulation or order or any agreement by the employer and employee or any other party to the proceeding shall be a prerequisite to the court's approval or disapproval of the award being paid in one (1) or more lump sum payments. In making the commutation, the lump sum payment shall, in the aggregate, amount to a sum of all future installments of compensation. No settlement or compromise shall be made except on the terms provided in this chapter. In determining whether to commute an award, the trial court shall consider whether the commutation will be in the best interest of the employee, and the court shall also consider the ability of the employee to wisely manage and control the commuted award, regardless of whether special needs exist. Attorneys' fees may be paid as a partial lump sum from any award when approved and ordered by the trial judge.

(b)(1) Certified copies of the pleadings, orders, judgments and decrees, whereby any lump sum payment settlement has been approved by the court, shall be forwarded to the division of workers' compensation by the employer within ten (10) days after the entry of any final judgment in the proceeding.

(2) The administrator shall have thirty (30) days after the receipt of the certified copies of the proceedings within which to intervene in the lump sum settlement proceedings to secure a readjustment of the lump sum in accordance with the requirements and provisions of this law, whether court shall have adjourned or not, § 50-6-230 to the contrary notwithstanding.

**50-6-229. Commutation to lump sum payment with consent of court.**  
**[Effective on July 1, 2014. See the version effective until**  
**July 1, 2014.]**

*(a) The amounts of compensation payable periodically under this chapter may be commuted to one (1) or more lump sum payments. These may be commuted upon motion of any party subject to the approval of the circuit, chancery or criminal court. No agreed stipulation or order or any agreement by the employer and employee or any other party to the proceeding shall be a prerequisite to the court's approval or disapproval of the award being paid in one (1) or more lump sum payments. In making the commutation, the lump sum payment shall, in the aggregate, amount to a sum of all future installments of compensation. No settlement or compromise shall be made except on the terms provided in this chapter. In determining whether to commute an award, the trial court shall consider whether the commutation will be in the best interest of the employee, and the court shall also consider the ability of the employee to wisely manage and control the commuted award, regardless of whether special needs exist. Attorneys' fees may be paid as a partial lump sum from any award when approved and ordered by the trial judge.*

*(b) All settlements of compensation by agreement of the parties and all awards of compensation made by the court of workers' compensation claims, when the amount paid or to be paid in settlement or by award does not exceed the compensation for twenty-six (26) weeks of disability, shall be final and not subject to readjustment.*

*(c) All amounts paid by the employer and received by the employee or the employee's dependents, by lump sum payments, shall be final, but the amount of any award payable periodically for more than twenty-six (26) weeks may be modified as follows:*

- (1) At any time by agreement of the parties and approval by the court; or*
- (2) If the parties do not agree, then at any time after twenty-six (26) weeks from the date of the award, either party may file an application to the court of workers' compensation claims, on the ground of increase or decrease of incapacity due solely to the injury.*

**50-6-230. Awards and agreed settlements — Finality. [Effective until**  
**July 1, 2014.]**

All settlements of compensation by agreement of the parties and all awards of compensation made by the court, where the amount paid or to be paid in settlement or by award does not exceed the compensation for six (6) months' disability, shall be final and not subject to readjustment.

**50-6-231. Lump sum payments final — Modification of periodic pay-**  
**ments for more than six months. [Effective until July 1,**  
**2014.]**

All amounts paid by the employer and received by the employee or the employee's dependents, by lump sum payments, shall be final, but the amount of any award payable periodically for more than six (6) months may be modified as follows:

- (1) At any time by agreement of the parties and approval by the court; or*
- (2) If the parties cannot agree, then at any time after six (6) months from the date of the award an application may be made to the courts by either*

party, on the ground of increase or decrease of incapacity due solely to the injury. In those cases, the same procedure shall be followed as in § 50-6-225 in case of a disputed claim for compensation.

**50-6-232. Present value of future installments — Deposit in trust releasing employer — Trustee to make payments. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) Any time after the amount of any award has been agreed upon by the parties, or found and ordered by the court, a sum of all future installments of compensation may, where death or the nature of the injury renders the amount of future payments certain, by leave of court, be paid by the employer to any savings bank or trust company of this state to be approved and designated by the court, and the sum, together with all interest on the sum, shall be held in trust for the employee or the dependents of the employee who shall have no further recourse against the employer.

(b) The payment of the sum by the employer evidenced by the receipts in duplicate of the trustee, one (1) of which shall be filed with the division of workers' compensation, and the other filed with the clerk of the circuit court, shall operate as a satisfaction of the award as to the employer.

(c) Payments from the fund shall be made by the trustee in the same amounts and at the same time as are required of the employer until the fund interest is exhausted.

(d) In the appointment of the trustee, preference shall be given, in the discretion of the court, to the choice of the injured employee or the dependent of the deceased employee, as the case may be.

**50-6-232. Present value of future installments — Deposit in trust releasing employer — Trustee to make payments. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) Any time after the amount of any award has been agreed upon by the parties, or found and ordered by the court, a sum of all future installments of compensation may, where death or the nature of the injury renders the amount of future payments certain, by leave of court, be paid by the employer to any savings bank or trust company of this state to be approved and designated by the court, and the sum, together with all interest on the sum, shall be held in trust for the employee or the dependents of the employee who shall have no further recourse against the employer.*

*(b) The payment of the sum by the employer evidenced by the receipts of the trustee, which shall be filed with the division, shall constitute satisfaction of the award by the employer.*

*(c) Payments from the fund shall be made by the trustee in the same amounts and at the same time as are required of the employer until the fund interest is exhausted.*

*(d) In the appointment of the trustee, preference shall be given, in the discretion of the court of workers' compensation claims, to the choice of the injured employee or the dependent of the deceased employee, as the case may be.*

**50-6-233. Enforcement power of commissioner — Referral of vocational rehabilitation cases — Promulgation of rules and regulations to implement chapter. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a)(1) There is conferred upon the commissioner the power to enforce this chapter that relate to the assurance of payments of the awards under this chapter.

(2) The commissioner has the power, subject to the approval of the governor, to employ clerical assistance the commissioner deems necessary and fix the compensation of the person or persons so employed.

(3) The commissioner may make rules and regulations not inconsistent with this law for the purpose of discharging the commissioner's duties under this chapter.

(4) The commissioner may provide forms for the use of employers and other literature that may be necessary and shall furnish to any employee or employer literature and blank forms that the commissioner deems requisite to facilitate or promote the efficient administration of this chapter.

(5) In no event shall the division of workers' compensation charge a fee or impose a cost for any necessary or required forms needed to process a workers' compensation claim.

(6) The commissioner shall modify Form # C32 to include a location for a health care provider to indicate temporary total disability and the point at which the employee reached maximum medical improvement.

(b) The commissioner shall cause the division of workers' compensation to refer all feasible cases for vocational rehabilitation to the department of education.

(c) In addition to the rulemaking authority granted in § 50-6-118, and subsection (a), the commissioner or the commissioner of commerce and insurance, as appropriate, may promulgate rules and regulations implementing this chapter. The rules and regulations shall be promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The commissioner's rules and regulations shall include, but not be limited to, the rules and regulations:

(1) Establishing minimum qualifications and training for workers' compensation specialists;

(2) Establishing procedures for benefit review conferences including the time within which all conferences must be held and the times within which copies of reports and agreements must be filed with the commissioner. The rules shall prescribe a mechanism by which written notice of all conferences, copies of agreements, and copies of reports shall be provided to the insurer, the employee, the employer, and any party to a claim. The rules shall provide guidelines relating to claims that do not require a benefit review conference;

(3) To provide a civil penalty for parties to a claim who fail to attend a properly scheduled and noticed conference;

(4) To provide a procedure to withhold payment from a health care provider for over-utilization of medical care or services or for ordering inappropriate medical care or services;

(5) To provide an appeal procedure for a health care provider who has had payment withheld for over-utilization of medical care or services;

(6) To provide a system of case management to coordinate the medical care services provided to employees claiming benefits under this chapter.

The rules and regulations shall establish a threshold of medical expenses and services or other appropriate point over which all cases will be subject to case management;

(7) To ensure health care providers' compliance with § 50-6-204(a)(4), and rules and regulations to provide an appeal procedure for a health care provider who has had payment withheld for charging amounts found to be excessive; provided, that no rule promulgated pursuant to this subdivision (c)(7) shall be filed with the secretary of state after approval by the attorney general and reporter, pursuant to §§ 4-5-207 and 4-5-211, unless also approved by the medical care and cost containment committee established by § 50-6-125; and

(8) To establish a civil penalty, to be assessed at the discretion of the commissioner, against a provider who has, after proper notification and appropriate time to respond, refused to make repayment to a payor for a payment that exceeds the medical fee schedule after exhausting all appeals. Under no circumstances shall a provider be assessed a civil penalty solely for receiving payment from a payor that exceeds the medical fee schedule.

**50-6-233. Enforcement powers of administrator — Referral of vocational rehabilitation cases — Promulgation of rules and regulations to implement chapter. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a)(1) There is conferred upon the administrator the power to enforce this chapter that relate to the assurance of payments of the awards under this chapter.*

*(2) In no event shall the division of workers' compensation charge a fee or impose a cost for any necessary or required forms needed to process a workers' compensation claim.*

*(b) The administrator shall cause the division of workers' compensation to refer all feasible cases for vocational rehabilitation to the department of education.*

*(c) In addition to the rulemaking authority granted in § 50-6-118, and subsection (a), the administrator or the commissioner of commerce and insurance, as appropriate, may promulgate rules and regulations implementing this chapter. The rules and regulations shall be promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.*

**50-6-234. Discontinuance or change in temporary disability benefits by employer — Resumption or increase of benefits. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) In any case where the employer has commenced paying temporary disability benefits to the employee and has then stopped or changed the benefits for any cause other than failure of an employee to submit to employer requests for reasonable medical examinations by the treating physician or final settlement, the employee may petition a court of proper jurisdiction to order that the employer show good cause why the temporary benefits should not be resumed or increased.

(b) Upon a hearing, the court is authorized to award the resumption or increase of the benefits to the employee from the employer.

(c) The hearing shall be held within twenty (20) days after the petition is

filed.

(d) After temporary disability payments have commenced, when the injured employee reaches maximum medical improvement, a permanent impairment rating is given and the compensability of the injury has not been contested by the employer, then payments shall continue until the earlier of the following events: the injured employee accepts or rejects a job offered by the employer at a wage equal to or greater than the employee's pre-injury wage, if the employee is able to perform the duties of the position within any restrictions placed on the employee by the physician selected pursuant to § 50-6-204; or a benefit review conference is held and the report is filed pursuant to § 50-6-240. In no case may temporary payments pursuant to this subsection (d) exceed the lesser of sixty (60) days or the value of the employee's permanent partial disability award calculated solely upon the medical impairment; provided, that these limits may be exceeded if agreed to by all parties. The amount of the payment shall be credited against any permanent award. For purposes of this subsection (d), the determination of attainment of maximum medical improvement and the employee's medical impairment shall be made by the physician selected in accordance with § 50-6-204. Nothing in this subsection (d) shall require an employer to return any employee to work.

**50-6-234. Discontinuance or change in temporary disability benefits by employer — Resumption or increase of benefits. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) In any case when the employer has commenced paying temporary disability benefits to the employee and has then stopped or changed the benefits for any cause other than failure of an employee to submit to employer requests for reasonable medical examinations by the treating physician or final settlement, the employee may request the assistance of a workers' compensation mediator who shall mediate the dispute, in accordance with § 50-6-236. If the dispute is not resolved by agreement, the parties may submit the dispute to a workers' compensation judge for resolution after the workers' compensation mediator has issued a dispute certification notice in accordance with § 50-6-236.*

*(b) After temporary disability payments have commenced, when the injured employee reaches maximum medical improvement and the compensability of the injury has not been contested by the employer, then payments shall continue until the injured employee accepts or rejects a job offered by any employer at a wage equal to or greater than the employee's pre-injury wage, if the employee is able to perform the duties of the position within any restrictions placed on the employee by the physician selected pursuant to § 50-6-204. In no case may temporary payments pursuant to this subsection (b) exceed the lesser of sixty (60) days or the value of the employee's permanent partial disability award calculated solely upon the medical impairment; provided, that these limits may be exceeded if agreed to by all parties. The amount of the payment shall be credited against any permanent award. For purposes of this subsection (b), the determination of attainment of maximum medical improvement and the employee's medical impairment shall be made by the physician selected in accordance with § 50-6-204. Nothing in this subsection (b) shall require an employer to return any employee to work.*

**50-6-235. Depositions by physicians — Written medical report — Admissibility — Schedule for charges. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a)(1) If a physician refuses to make a reasonable effort to give a deposition in a workers' compensation case within ninety (90) days of receipt of notice, the employee may petition the court for an order requiring the physician to give the deposition.

(2) If the physician does not respond to the petition in a timely fashion, the physician may lose the exemption from subpoena to trial established by § 24-9-101.

(b) For the purpose of subsection (a), the requirement that the physician make a reasonable effort to give a deposition may be presumed to be satisfied if the physician offers to be available to give the physician's deposition within ninety (90) days' of notice at two (2) or more reasonable places and at times within normal business hours, but because of scheduling difficulties on the part of any of the other persons who wish to be present at the deposition, the deposition cannot take place at either of the times and places offered by the physician.

(c)(1) Any party may introduce direct testimony from a physician through a written medical report on a form established by the commissioner. The commissioner shall establish by rule the form for the report. All parties shall have the right to take the physician's deposition on cross examination concerning its contents. Any written medical report sought to be introduced as evidence shall be signed by the physician making the report bearing an original signature. A reproduced medical report that is not originally signed is not admissible as evidence unless accompanied by an originally signed affidavit from the physician or the submitting attorney verifying the contents of the report. Any written medical report sought to be introduced into evidence shall include within the body of the report or as an attachment a statement of qualifications of the person making the report. The commissioner shall, by regulation, fix the fee to be charged by the physician for the preparation and filing of the report and fix penalties for a failure to file the report after a timely request for it by any interested party.

(2) The written medical report of a treating or examining physician shall be admissible at any stage of a workers' compensation claim in lieu of a deposition upon oral examination, if notice of intent to use the sworn statement is provided to the opposing party or counsel not less than twenty (20) days before the date of intended use. If no objection is filed within ten (10) days of the receipt of the notice, the sworn statement shall be admissible as described in this subsection (c). In the event that a party does object, then the objecting party shall depose the physician within a reasonable period of time or the objection shall be deemed to be waived.

(d) The medical care and cost containment committee established in § 50-6-125 shall establish a schedule by rule for reasonable charges by physicians for preparing and giving depositions in workers' compensation cases. The schedule may be subject to annual revision. Physicians shall not be permitted to charge more than the amount permitted under the schedule. The rule shall be subject to the approval of the commissioner, including annual revisions.

**50-6-235. Depositions by physicians — Written medical report — Admissibility — Schedule for charges. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a)(1) If a physician refuses to make a reasonable effort to give a deposition in a workers' compensation case within ninety (90) days of receipt of notice, the employee may petition the court for an order requiring the physician to give the deposition.*

*(2) If the physician does not respond to the petition in a timely fashion, the physician may lose the exemption from subpoena to trial established by § 24-9-101.*

*(b) For the purpose of subsection (a), the requirement that the physician make a reasonable effort to give a deposition may be presumed to be satisfied if the physician offers to be available to give the physician's deposition within ninety (90) days' of notice at two (2) or more reasonable places and at times within normal business hours, but because of scheduling difficulties on the part of any of the other persons who wish to be present at the deposition, the deposition cannot take place at either of the times and places offered by the physician.*

*(c)(1) Any party may introduce direct testimony from a physician through a written medical report on a form established by the administrator. The administrator shall establish by rule the form for the report. All parties shall have the right to take the physician's deposition on cross examination concerning its contents. Any written medical report sought to be introduced as evidence shall be signed by the physician making the report bearing an original signature. A reproduced medical report that is not originally signed is not admissible as evidence unless accompanied by an originally signed affidavit from the physician or the submitting attorney verifying the contents of the report. Any written medical report sought to be introduced into evidence shall include within the body of the report or as an attachment a statement of qualifications of the person making the report. The administrator shall, by regulation, fix the fee to be charged by the physician for the preparation and filing of the report and fix penalties for a failure to file the report after a timely request for it by any interested party.*

*(2) The written medical report of a treating or examining physician shall be admissible at any stage of a workers' compensation claim in lieu of a deposition upon oral examination, if notice of intent to use the sworn statement is provided to the opposing party or counsel not less than twenty (20) days before the date of intended use. If no objection is filed within ten (10) days of the receipt of the notice, the sworn statement shall be admissible as described in this subsection (c). In the event that a party does object, then the objecting party shall depose the physician within a reasonable period of time or the objection shall be deemed to be waived.*

*(d) The medical payment committee established in § 50-6-125 shall establish a schedule by rule for reasonable charges by physicians for preparing and giving depositions in workers' compensation cases. The schedule may be subject to annual revision. Physicians shall not be permitted to charge more than the amount permitted under the schedule. The rule shall be subject to the approval of the administrator, including annual revisions.*

**50-6-236. Workers' compensation specialists. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) The commissioner shall establish a workers' compensation specialist program to assist injured or disabled employees, persons claiming death benefits, employers and other persons in protecting their rights and obtaining information available under workers' compensation laws.

(b) A workers' compensation specialist shall meet with or otherwise provide information to or receive information from injured or disabled employees, employers, insurance carriers and health care providers on behalf of injured or disabled employees. The specialist shall conduct informal dispute resolution by holding benefit review conferences throughout the state. The conference shall be held in the county where the employee lives, unless otherwise agreed to between the parties, or otherwise directed by the commissioner.

(c) Any person employed as a specialist by the commissioner is ineligible to further handle cases that require the person's involvement during this employment as a specialist.

(d) A workers' compensation specialist shall examine any proposed settlement reached during the benefit review conference to determine whether the employee is receiving, substantially, the benefits provided by this chapter.

(e) Each employer shall notify the employer's employees of the workers' compensation specialist service in a manner prescribed by the commissioner. At a minimum, the notice shall include the posting of a notice in one (1) or more conspicuous places. The notice shall include a toll-free number for employees to reach a workers' compensation specialist. The commissioner shall also describe clearly the availability of the workers' compensation specialist on the first report of accident form required by this chapter.

(f) Workers' compensation specialists shall conduct benefit review conferences. The commissioner shall institute and maintain an education and training program for workers' compensation specialists, who must be employees of the division. The specialists shall be trained in the principles and procedures of dispute mediation. The commissioner is authorized to consult or enter into contracts with the federal mediation and conciliation service or other appropriate organizations to accomplish this purpose.

(g) In conducting benefit review conferences, the workers' compensation specialist shall:

(1) Mediate disputes between the parties and assist in the adjustment of claims consistent with this chapter and the policies of the commissioner, before and after the benefit review conference;

(2) Thoroughly inform all parties of their rights and responsibilities under this chapter, including the right of any party to be represented by an attorney of the party's choice;

(3) Ensure that all documents and information relating to the employees' wages, medical condition, and any other information pertinent to the resolution of disputed issues are contained in the claim file at the conference, especially in cases in which the employee is not represented by an attorney; and

(4) Determine whether, under any proposed settlement, the employee is receiving, substantially, the benefits provided by this chapter.

(h) A benefit review conference shall be requested at any time within the limitation period or periods provided in §§ 50-6-203 or 50-6-306. A workers'

compensation specialist shall have the authority to continue or reschedule a benefit review conference. A workers' compensation specialist shall also have the authority to cancel or waive a benefit review conference, solely within the discretion of that workers' compensation specialist.

(i) For the purpose of conducting discovery, workers' compensation specialists shall have the authority, either on their own or at the request of either party, to refer matters to a specially designated attorney within the department who may issue subpoenas, effect discovery, and issue protective orders in the same manner as an administrative judge or hearing officer pursuant to § 4-5-311.

(j) The workers' compensation specialist may not take testimony but may direct questions to an employee, an employer, or a representative of an insurance carrier to supplement or clarify information in a claim file.

(k) The workers' compensation specialist shall maintain a file concerning these proceedings.

(l) The workers' compensation specialist shall not engage in litigation or determination of workers' compensation claims outside of the workers' compensation specialist's duties as a workers' compensation specialist.

(m) The commissioner shall establish a program of continuing education and training for workers' compensation specialists in order to assure that specialists maintain current and appropriate skills and knowledge in performing their duties. The program of continuing education shall include, at a minimum, seven (7) hours of continuing education each fiscal year. The minimum seven (7) hours of education shall be specifically in the area of Workers' Compensation Law, compiled in this chapter, and shall be in addition to any mediation training provided to the specialists. Three (3) of the seven (7) hours of education shall be approved by the Tennessee commission on continuing legal education and specialization. In addition to the annual seven-hour continuing education requirement, each specialist hired by the department shall be provided, within one (1) month of the date of hire, formal training and education, which shall include training on the department's workers' compensation system, the Tennessee workers' compensation statutes and caselaw, and the rules and regulations of the division of workers' compensation. Documentation reflecting the type of education and training provided pursuant to this subsection (m) shall be maintained by the administrator of the division of workers' compensation. Documentation of each educational program shall include the date of the program, the name of each specialist attending, a description of the educational program including topics covered, the name of the sponsor or provider of the educational program and the number of hours for each educational program.

**50-6-236. Workers' compensation mediators program. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

(a) *The administrator shall establish a workers' compensation mediators program to assist injured or disabled employees, persons claiming death benefits, employers and other persons in protecting their rights, resolving disputes, and obtaining information pertinent to workers' compensation laws and practices.*

(b) *In accordance with rules adopted by the administrator, the mediator shall conduct alternative dispute resolution and the mediator shall:*

*(1) Mediate all disputes between the parties related to the resolution of a claim for workers' compensation benefits and assist in the adjustment of claims consistent with this chapter and the policies of the administrator;*

*(2) Thoroughly inform all parties of their rights and responsibilities under this chapter, including the right of any party to be represented by an attorney of the party's choice;*

*(3) Accept all documents and information presented to the division relating to the employee's wages, medical condition, and any other information pertinent to the resolution of disputed issues and include them in the claim file; and*

*(4) If the parties reach a full and final settlement, the mediator shall reduce the settlement to writing and each party, or their representative, shall sign. Any settlement reached during alternative dispute resolution proceedings shall not become effective, until it has been approved by a workers' compensation judge in accordance with the procedure provided in this chapter.*

*(c)(1) When mediation is held, a person representing the employee and the employer, or the employer's insurer, with the authority to settle, shall attend. It shall not be required that the state or its representative who attends mediation have final settlement authority. Parties entering into mediation shall be prepared to mediate all disputed issues at the beginning of mediation and shall mediate all issues in good faith.*

*(2) When a mediator determines that a party is not prepared to mediate as required or believes a party is not mediating in good faith, the mediator shall include comments to that effect in the dispute certification notice.*

*(3) The administrator is authorized to promulgate rules to effectuate the purposes of this subsection in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The violation of those rules or the provisions of this subsection may subject the party or their representative to a civil penalty of not less than fifty dollars (\$50.00) or more than five thousand dollars (\$5,000).*

*(d) If the parties are unable to reach settlement of any disputed issues, the mediator shall issue a written dispute certification notice setting forth all unresolved issues for hearing before a workers' compensation judge.*

*(1) The dispute certification shall be issued on a form prescribed by the administrator and signed by the assigned workers' compensation mediator who shall distribute a copy of the signed dispute certification notice to all parties in accordance with rules adopted by the administrator.*

*(2) No party is entitled to a hearing before a workers' compensation judge to determine temporary or permanent benefits or to resolve a dispute over the terms of an agreed settlement of a workers' compensation claim, unless a workers' compensation mediator has issued a dispute certification notice setting forth the issues for adjudication by a workers' compensation judge.*

*(A) Within five (5) business days after a copy of the dispute certification notice signed by the mediator has been distributed to the parties, any party may, on no more than one (1) occasion for each notice, present a written request that the contents of the dispute certification notice be amended to the mediator who presided over the alternative dispute resolution proceeding.*

*(B) If a written request to amend the dispute certification notice is presented to the mediator before the expiration of the five (5) business day*

*period provided in subdivision (d)(2)(A), the mediator shall, within three (3) business days after the initial five (5) business day period ends, issue an amended dispute certification notice. If no amended dispute certification notice is signed by the mediator and distributed to the parties, the initial dispute certification notice distributed to the parties pursuant to subdivision (d)(2) shall remain in effect.*

*(e) A workers' compensation mediator shall not be an advocate for either party and shall mediate all issues without favor or presumption for or against either party. A mediator shall have no authority to order the provision of workers' compensation benefits.*

*(f) Any person employed as a workers' compensation mediator shall not engage in mediation, litigation, or determination of workers' compensation claims outside of the workers' compensation mediator's duties as a workers' compensation mediator.*

*(g) If, following a request by the mediator, a party fails to produce documents, to cooperate in scheduling mediation, or to provide a representative authorized to settle a matter in attendance at mediation, then the mediator may issue a dispute certification notice and include a statement detailing the party's failure to cooperate, produce documents or to ensure attendance of a representative authorized to settle the claim. On the motion of either party or on the workers' compensation judge's motion, a workers' compensation judge is authorized, but not required, to hold a hearing on the failure to produce documents requested by the mediator, to cooperate in scheduling and to provide a representative who possessed settlement authority. If the workers' compensation judge determines that the failure lacked good cause or resulted from bad faith, then the workers' compensation judge may assess the offending party who failed to take the requested action with attorney's fees and costs related only to the mediation and the hearing. The administrator is authorized to promulgate rules to effectuate the purposes of this subsection (g) in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.*

**50-6-237. Purpose of benefit review conference — Paid representation required to be by licensed attorney. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) A benefit review conference is a nonadversarial, informal dispute resolution proceeding designed to:

(1) Explain, orally and in writing, the rights of the respective parties to a workers' compensation claim and the procedures necessary to protect those rights;

(2) Discuss the facts of the claim, review available information in order to evaluate the claim, and delineate the disputed issues;

(3) Mediate and resolve disputed issues by mutual agreement of the parties in accordance with this chapter and the policies of the commissioner;

(4) Provide an opportunity for, but not to compel, a binding settlement of some or all of the issues present at the time;

(5) Facilitate the resolution of issues without the expense of litigation or attorneys' fees for either party; and

(6) Determine, under any proposed settlement, whether any employee is

receiving, substantially, the benefits provided by this chapter.

(b) Any person charging a fee specifically for the representation of an employee in any early dispute resolution proceeding or benefit review conference under this chapter shall be an attorney licensed to practice law in the state.

(c) When a benefit review conference is held, both the employee and the employer, or the employer's insurer, shall provide that a person with the authority to settle the dispute attends the conference. Parties entering into the benefit review conference process are required to mediate in good faith. Each party must be prepared to consider offers made by the other party. When a specialist determines that a party is not prepared to mediate as required or believes a party is not mediating in good faith, the specialist shall include comments to that effect in the report of the proceeding. Failure to comply with this section may subject the party or their representative to a civil penalty of not less than fifty dollars (\$50.00) nor more than five thousand dollars (\$5000).

**50-6-237. Court of workers' compensation claims. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*There is created the court of workers' compensation claims in the division of workers' compensation, which shall have original and exclusive jurisdiction over all contested claims for workers' compensation benefits when the date of the alleged injury is on or after July 1, 2014. The administrator shall have sole administrative authority over the court including authority to appoint, and to remove, workers' compensation judges. The administrator shall promulgate rules and regulations consistent with this chapter in order to fulfill the purposes of this chapter in an orderly and efficient manner.*

**50-6-238. Assistance of workers' compensation specialist in determining award of benefits — Authority of specialist — Refunds — Specialist's determination as evidence — Penalty for noncompliance with specialist's order. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a)(1)(A) Any party or their attorney may request the assistance of a workers' compensation specialist in the determination of whether temporary disability or medical benefits are appropriate by filing with the division a form prescribed for that purpose by the commissioner.

(B)(i) For injuries occurring on or after July 1, 2008, if the request for the assistance of a workers' compensation specialist is filed pursuant to (a)(1)(A) within the time prescribed by § 50-6-203 or § 50-6-306, the time within which to file a request for a benefit review conference shall not expire before sixty (60) days after the issuance of a benefit review report by the workers' compensation specialist making the determination on the request for assistance.

(ii) Notwithstanding subdivision (a)(1)(B)(i), in no event shall the parties have less time to file a request for a benefit review conference than is prescribed by § 50-6-203 or § 50-6-306.

(C) With respect to the determination of whether to order the payment of temporary disability or medical benefits, a workers' compensation specialist shall not be an advocate for either party, but shall decide the issues solely on the basis of the information available to the specialist

without favor or presumption for or against either party.

(2) If, in light of available information, a workers' compensation specialist determines that it is appropriate to order the payment of temporary disability benefits to an employee, then a workers' compensation specialist may order the initiation, continuation or reinstitution of the benefits by an employer or the employers' workers' compensation insurer.

(3) If, in light of available information, a workers' compensation specialist determines that it is appropriate to order the employer or insurer to provide medical benefits, the specialist's authority shall include, but not be limited to, the authority to order specific medical treatment recommended by the treating physician, and the authority to require the employer to provide the appropriate panel of physicians to the employee, including a panel of appropriate specialists. The workers' compensation specialist shall also have the authority to enforce the provision of the panel of physicians as required under § 50-6-204(a)(4).

(4) Any benefits ordered by a workers' compensation specialist as provided in this subsection (a) shall be ordered on a form prescribed by the commissioner.

(5) If, under all of the relevant circumstances, the specialist deems it to be appropriate, the specialist shall order the retroactive payment of benefits.

(6)(A) If a party submits information, including, but not limited to, written or electronic documents, medical records, video or audio tapes or X-rays, to a workers' compensation specialist who is considering whether to order temporary disability or medical benefits, or both, the party shall also provide a copy of the information submitted to the opposing party, or the opposing party's attorney, at the time the information is provided to the specialist or upon request by the opposing party or attorney, or both.

(B) Upon request, a workers' compensation specialist shall provide either the employee, the employer, the employer's insurer or attorneys representing any party, or all of these parties, an opportunity to review the information the specialist has in the department's file upon which the specialist may base a decision as to whether to order temporary disability or medical benefits, or both. The reviewing party shall have the right to request a copy of any document or record contained in the department's file.

(C) The department shall be entitled to charge a fee for copying and mailing the documents requested. The fee shall not exceed ten dollars (\$10.00) for the first twenty-five (25) pages and a charge of twenty-five cents (25¢) for each page after twenty-five (25) pages. No additional fee shall be charged for postage. If the documents requested include videotapes, audiotapes or X-rays, the party who provided the video or audio tapes or X-rays to the specialist shall be required to provide a copy to the requesting party and the specialist shall have the authority to order the party to provide the tape or X-ray to the requesting party.

(b) If a specialist has ordered the payment of benefits pursuant to this section and a court subsequently finds that the employee was not entitled to the ordered benefits, then the entity or person who paid the benefits shall be entitled to a refund of all amounts paid pursuant to a specialist's order or orders. The refund shall be paid from the second injury fund established by § 50-6-208. The entity or person who paid the benefits pursuant to a specialist's order or orders is not entitled to receive the refund until the claim has

been fully concluded by trial court or, if appealed, by the Tennessee supreme court. To receive the refund, the employer or employer's insurer shall send a certified copy of the final order of the trial or appellate court to the division of workers' compensation, by certified mail, return receipt requested. If the refund is not made within thirty (30) days of the date the certified mail was accepted by the division, then the employer or employer's insurer shall be entitled to interest at the rate of ten percent (10%) per annum from the date the refund became overdue.

(c) Evidence of the denial of initiation, continuation or reinstitution of compensation ordered pursuant to this section by a workers' compensation specialist is inadmissible in a subsequent proceeding. In a case where an employer or insurer has paid benefits pursuant to an order of a workers' compensation specialist, and the employer or insurer wishes to contest the compensability of the injury, then the court shall hear the issue de novo, and no presumption of correctness is given to any prior determination.

(d)(1)(A) If a specialist issues an order that denies the compensability of the employee's claim or denies workers' compensation benefits to the employee, the employee may request the administrator of the division of workers' compensation to administratively review the specialist's order by submitting a written request to the administrator in a format specified by the administrator. The written request shall be submitted to the administrator no later than seven (7) calendar days from the date on which the employee received the specialist's order denying compensability or benefits. If no written request to administratively review the order of a specialist is submitted to the administrator of the division of workers' compensation, the order of the specialist becomes final.

(B)(i) If a specialist issues an order for the payment of workers' compensation benefits pursuant to this section, the party against whom the order was issued may request the administrator of the division of workers' compensation to administratively review the specialist's order by submitting a written request to the administrator in a format specified by the administrator. The written request shall be submitted to the administrator no later than seven (7) calendar days from the date on which the party received the specialist's order that is the subject of the request.

(ii) If no written request to administratively review the order of a specialist is submitted to the administrator of the division of workers' compensation, as provided in this subsection (d), the party against whom a specialist has issued an order to provide or pay workers' compensation benefits shall comply with the order within fifteen (15) calendar days of the receipt of the order.

(iii) If a written request for administrative review of a specialist's order is submitted to the administrator of the division of workers' compensation, the party against whom a specialist has issued an order to provide or pay workers' compensation benefits is not required to comply with the specialist's order as outlined in subdivision (d)(1)(B)(ii).

(2)(A) After receipt of a written request for administrative review of a specialist's order, an informal conference with the affected parties shall be conducted by the administrator or the administrator's designee. The informal conference with the administrator or the administrator's designee shall occur within ten (10) calendar days of the date the administrator

received the written request for administrative review. The administrator's designee shall be a Tennessee licensed attorney, shall have a minimum of five (5) years of experience with the Workers' Compensation Law, compiled in this chapter, and shall not be the specialist who issued the order that is the subject of administrative review.

(B) Within seven (7) calendar days following the conclusion of the informal conference, a written order shall be issued and signed by the administrator or administrator's designee. If the order issued and signed by the administrator or administrator's designee orders the payment of workers' compensation benefits to or on behalf of the employee, the party against whom the order is issued shall comply with the order within ten (10) calendar days of the receipt of the order of the administrator or administrator's designee.

(3) **[See the Compiler's Notes.]** If an insurer, self-insured employer or self-insured pool fails to comply with an order issued by a specialist within fifteen (15) calendar days of receipt of the order, or fails to comply with an order issued by the administrator or administrator's designee within ten (10) calendar days of the receipt of the order, whichever is applicable, the commissioner shall assess a penalty in the amount of ten thousand dollars (\$10,000). Notification of the assessed penalty shall be sent to the insurer, self-insured employer or self-insured pool by facsimile, electronic mail or certified mail. The insurer, self-insured employer or self-insured pool shall have five (5) calendar days from the receipt of the notification of penalty to respond and prove that it has complied with the specialist's order. If satisfactory proof of compliance is not received by the twenty-first calendar day after receipt of the notification of penalty, additional penalties in the amount of one thousand dollars (\$1,000) per day shall begin to accrue on the twenty-first day. The insurer, self-insured employer or self-insured pool shall have the right to appeal the penalty assessed by the commissioner for failure to comply with an order issued by a specialist or by the administrator or administrator's designee pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(4) In addition to any other penalty provided by law, if an insurer, self-insured employer or self-insured pool fails to comply with an order issued by a specialist or fails to comply with an order issued by the administrator or the administrator's designee within thirty (30) days of receipt of the order, the commissioner shall notify the commissioner of commerce and insurance of the failure to comply. The commissioner of commerce and insurance may consider the continued failure to comply with the order of the specialist or administrator or the administrator's designee as a violation of title 56, chapter 8, which subjects the insurer to the penalty provisions of § 56-8-109, and may consider any failure by a self-insured employer or self-insured pool to comply with the order of the specialist sufficient grounds to revoke the employer's status as a self-insured employer or self-insured pool pursuant to § 50-6-405.

**50-6-238. Appointment of workers' compensation judges — Duties of judges — Appointment of chief judge of the court of workers' compensation claims — Duties of chief judge — Appointment of clerk of the court of workers' compensation claims — Duties of clerk. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a)(1) On or after July 1, 2013, the administrator shall appoint qualified individuals to serve as workers' compensation judges. Workers' compensation judges shall be Tennessee licensed attorneys in good standing with at least five (5) years experience in workers' compensation matters and shall be at least thirty (30) years of age. Workers' compensation judges shall be executive service employees of the state as defined in § 8-30-103(7).*

*(2)(A) In making the initial appointments, the administrator shall have authority to shorten and stagger the terms of workers' compensation judges to ensure that the terms of no more than seven (7) workers' compensation judges shall terminate at the same time.*

*(B) Except for the initial appointment of candidates to fill the position of workers' compensation judge, upon appointment, each workers' compensation judge shall serve a term of six (6) years. Terms shall begin on July 1 and expire six (6) years later, on June 30. No workers' compensation judge shall serve more than three (3) full terms, and service of more than half of a six (6) year term shall constitute service of one (1) full term. If a sitting workers' compensation judge is removed or resigns, a vacancy shall exist in the office, which shall be filled for the unexpired term by a person meeting the requirements of subdivision (a)(1).*

*(C) Any workers' compensation judge may be reappointed by the administrator upon expiration of the term.*

*(D) If a workers' compensation judge leaves the position prior to the expiration of the term, the administrator shall appoint an individual meeting the qualifications of this section to serve the unexpired portion of the term. The individual may be reappointed by the administrator upon expiration of the term. Any workers' compensation judge appointed to serve less than a full term to fill a vacancy created by the removal or resignation of a sitting workers' compensation judge shall be eligible to serve an additional three (3) full terms.*

*(3) It shall be the duty of a workers' compensation judge to hear and determine claims for compensation, to approve settlements of claims for compensation, to conduct hearings, and to make orders, decisions, and determinations. Workers' compensation judges shall conduct hearings in accordance with the Tennessee Rules of Civil Procedure, the Tennessee Rules of Evidence and the rules adopted by the division and shall have authority to issue subpoenas and to compel obedience to their judgments, orders, and process through the assessment of a penalty as provided in § 50-6-118.*

*(b)(1) On or after July 1, 2013, the administrator shall appoint a qualified individual to serve as chief judge of the court of workers' compensation claims. The individual shall be a Tennessee licensed attorney in good standing with at least seven (7) years experience in workers' compensation matters. The chief judge shall be an executive service employee of the state as defined in § 8-30-103(7).*

*(2) In addition to performing the duties required of a workers' compensation judge by subdivision (a)(3), it shall be the duty of the chief judge, under*

*the rules adopted by the division, to administer the day to day operations of the court of workers' compensation claims and supervise the activities of workers' compensation judges.*

*(3) Upon appointment, the chief judge shall serve a term of six (6) years and may be reappointed by the administrator upon expiration of the term. No chief judge of the court of workers' compensation claims shall serve more than two (2) full terms, and service of more than half of a six (6) year term shall constitute service of one (1) full term. Any chief judge of the court of workers' compensation claims appointed to serve less than a full term to fill a vacancy created by the removal or resignation of the previous chief judge shall be eligible to serve an additional two (2) full terms.*

*(c) Unless otherwise provided by law or clearly inapplicable in context, the Tennessee Code of Judicial Conduct, Rule 10, Canons 1-4, of the Rules of the Tennessee Supreme Court, and any subsequent amendments thereto, shall apply to all workers' compensation judges. However, any complaints regarding the conduct of a workers' compensation judge under the code shall be made to the chief workers' compensation judge. Any complaints about the chief judge shall be made to the administrator.*

*(d) The administrator shall have authority to remove a workers' compensation judge or the chief judge during an unexpired term for the commission of any of the judicial offenses provided in § 17-5-302.*

*(e) Any person appointed to serve as a workers' compensation judge or as the chief judge shall be required to take an oath or affirmation to support the constitutions of the United States and of this state, and to administer justice without respect of persons, and impartially to discharge all the duties incumbent upon a judge to the best of the judge's skill and ability. The oath may be taken before another workers' compensation judge, any inferior court judge, a retired judge, a retired chancellor or an active or retired judge of the court of general sessions.*

*(f) No workers' compensation judge or chief judge shall practice law, or perform any of the functions of attorney or counsel, in any of the courts of this state, except in cases in which the judge may have been employed as counsel previous to the appointment as a workers' compensation judge or chief judge. A newly appointed workers' compensation judge or chief judge can practice law only in an effort to wind up the judge's practice and must end the practice of law as soon as reasonably possible and in no event longer than one hundred eighty (180) days after assuming the position of workers' compensation judge or chief judge.*

*(g) When considering the appointment of an individual to serve as a workers' compensation judge or as the chief judge, the administrator shall consider comment from the members of the business, labor and legal communities concerning the suitability of the individual for appointment as a workers' compensation judge or the chief judge.*

*(h) On or after July 1, 2013, the administrator shall appoint a qualified individual to serve as the clerk of the court of workers' compensation claims whose duty it shall be to perform all the clerical functions of the court. The clerk of the court of workers' compensation claims shall be an executive service employee of the state as defined in § 8-30-103(7).*

**50-6-239. Motion for benefit review conference — Motion for expedited adjudication — Specialists. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) In all cases in which the parties have any issues in dispute, whether the issues are related to medical benefits, temporary disability benefits, or issues related to the final resolution of a matter, the parties shall request the department to hold a benefit review conference.

(b) The parties to a dispute shall attend and participate in a benefit review conference that addresses all issues related to a final resolution of the matter as a condition precedent to filing a complaint with a court of competent jurisdiction, unless the benefit review conference process is otherwise exhausted pursuant to rules promulgated by the commissioner.

(c)(1) The division shall have the authority to schedule a date specific for the benefit review conference. The division shall endeavor to work with the parties or their representatives to schedule a date convenient to the parties, and the parties shall cooperate in scheduling the conference; however, in the event the parties cannot agree to a date within forty-five (45) days of the date a benefit review conference is requested or the date on which the employee reaches maximum medical improvement, whichever date is later, the division shall schedule the conference on a specific date and give the parties written notice of the date and the parties shall attend the benefit review conference on the date scheduled by the division.

(2) If a request for a benefit review conference is on file for a period in excess of one (1) year, the division shall have the authority to schedule a date specific for the benefit review conference and give the parties written notice at their last known address.

(3) If the division fails to conduct a benefit review conference within sixty (60) days of receipt of a request for a benefit review conference or the date on which the employee reaches maximum medical improvement, whichever date is later, the parties may agree to hire a private Rule 31 mediator to conduct the mediation. Any agreement reached through private Rule 31 mediation must be approved by a court or the department in accordance with § 50-6-206.

(d) The commissioner is authorized to promulgate rules concerning all aspects of the administrative process related to benefit review conferences pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

**50-6-239. Request of hearing after issuance of dispute certification notice — Issuance of notice — Permission required to present issues not certified by mediator — Conduct of hearings — Hearings of disputes on expedited basis — Discovery disputes — Penalties for failure to comply with orders — Filing fees — Judicial review of orders. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

(a) *Within sixty (60) days after issuance of a dispute certification notice by a workers' compensation mediator, a party seeking further resolution of disputed issues shall file a request for a hearing with the division, and the clerk of the court of workers' compensation claims shall issue notice to all parties identifying the judge to whom the claim has been assigned and the procedure for*

*scheduling and preparing for a hearing.*

*(b) Unless permission has been granted by the assigned workers' compensation judge, only issues that have been certified by a workers' compensation mediator within a dispute certification notice may be presented to the workers' compensation judge for adjudication.*

*(1) Following the issuance of a dispute certification notice and assignment of the claim to a workers' compensation judge, the workers' compensation judge may grant permission for parties to present issues that have not been certified by a workers' compensation mediator only upon finding that:*

*(A) The parties did not have knowledge of the issue prior to issuance of the dispute certification and could not have known of the issue despite reasonable investigation; and*

*(B) Prohibiting presentation of the issue would result in substantial injustice to the petitioning party.*

*(c) Hearings of disputes shall be conducted in the following manner:*

*(1) All hearings shall be conducted within the timeframes adopted by the administrator through the promulgation of rules. The Tennessee Rules of Evidence and the Tennessee Rules of Civil Procedure shall govern proceedings at all hearings before a workers' compensation judge unless an alternate procedural or evidentiary rule has been adopted by the administrator. Whenever the administrator has adopted an alternate procedural or evidentiary rule that conflicts with the Tennessee Rules of Civil Procedure or the Tennessee Rules of Evidence, the rule adopted by the administrator shall apply.*

*(2) Following the hearing, the workers' compensation judge shall issue a compensation order that sets forth findings of fact and conclusions of law, and, if appropriate, an order for the payment of benefits under the workers' compensation law. The workers' compensation judge shall note the date of entry on the order and a copy of the order shall be distributed to the parties in accordance with procedures adopted by the administrator.*

*(3) If a party who has filed a request for hearing files a notice of nonsuit of the action, either party shall have ninety (90) days from the date of the order of dismissal to institute an action for recovery of benefits under this chapter.*

*(4) All hearings before the workers' compensation judge shall be open to the public. The parties may provide a court reporter for the preparation of a record.*

*(5) The testimony of any witness may be taken by deposition according to the Tennessee Rules of Civil Procedure or may be taken before the workers' compensation judge. No costs shall be charged, taxed or collected by the workers' compensation judge for the appearance of witnesses except fees for witnesses who testify under subpoena. The witnesses shall be allowed the same fee for attendance and mileage as is fixed by law in civil actions.*

*(6) Unless the statute provides for a different standard of proof, at a hearing the employee shall bear the burden of proving each and every element of the claim by a preponderance of the evidence.*

*(7) There shall be a presumption that the findings and conclusions of the workers' compensation judge are correct, unless the preponderance of the evidence is otherwise. The decision of the workers' compensation judge shall become final thirty (30) days after the workers' compensation judge enters a compensation order, unless a party in interest seeks an appeal of the decision from the workers' compensation appeals board pursuant to this chapter. If a*

*party in interest does not file a timely request for appeal to the workers' compensation appeals board, the order of the workers' compensation judge shall become final and may be appealed to the state supreme court in the manner provided by § 50-6-225.*

*(8) The workers' compensation judge may, in his discretion, assess discretionary costs including reasonable fees for depositions of medical experts against the employer upon adjudication of the employee's claim as compensable.*

*(9) After an order entered by a workers' compensation judge has become final, the parties subject to the order shall have five (5) business days after all appeals are exhausted to comply with the order or the noncompliant parties shall be subject to penalization as provided by § 50-6-118.*

*(10) In any claim where the employee has suffered a catastrophic injury, the workers' compensation judge assigned to the claim shall have discretion to order that the claim be heard on an expedited basis. If the assigned workers' compensation judge orders an expedited hearing of the claim, the claim shall be given priority over all cases on the workers' compensation judge's trial docket with the exception of any other claims that the workers' compensation judge has previously ordered to be heard on an expedited basis under this subdivision.*

*(d) Hearings of disputes on an expedited basis shall be conducted in the following manner:*

*(1) Upon motion of either party made at any time after a dispute certification notice has been issued by a workers' compensation mediator, a workers' compensation judge may, at the judge's discretion, hear disputes over issues provided in the dispute certification notice concerning the provision of temporary disability or medical benefits on an expedited basis and enter an interlocutory order upon determining that the injured employee would likely prevail at a hearing on the merits. A copy of the motion shall be served by the moving party on all other parties to the claim in accordance with procedures adopted by the administrator.*

*(2) A workers' compensation judge is not required to hold a full evidentiary hearing before issuing an interlocutory order for temporary disability or medical benefits.*

*(3) If temporary disability or medical benefits are ordered, the employer shall have seven (7) business days to comply with the order or to request an appeal from the workers' compensation appeals board. Unless modified by the workers' compensation appeals board following an appeal or unless a subsequent order to modify an interlocutory order for temporary disability or medical benefits is issued by the workers' compensation judge presiding over the claim, the interlocutory order shall remain in effect pending conclusion of the matter by hearing according to the procedure provided in subsection (c).*

*(4) If a motion for temporary disability or medical benefits is denied on the basis that the claim is not compensable, the proceeding shall continue according to the procedure provided in subsection (c) unless the employee files a request for an appeal to the workers' compensation appeals board. At any time after the employee has exhausted the procedures for seeking an appeal from the workers' compensation appeals board, as provided in this chapter, the workers' compensation judge may entertain an appropriate motion from the employer for dismissal of the claim.*

*(e) All discovery disputes, including motions to compel and for protective*

*order, shall be adjudicated upon the review of written motions and affidavits. A workers' compensation judge may, in the judge's discretion, convene a hearing on a discovery dispute only upon a finding that good cause to convene a hearing exists.*

*(f) The failure of any party to comply in a timely manner with an interlocutory or final order issued by a workers' compensation judge may result in the assessment of a penalty as provided in § 50-6-118.*

*(g) The administrator shall have authority to assess a filing fee sufficient to offset the cost of administering this chapter.*

*(h) Except as otherwise provided in § 50-6-118, no order issued by a workers' compensation judge shall be subject to judicial review pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.*

**50-6-240. Settlement agreement at conference — Written agreement or settlement — Report on unresolved issues — Filing. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a)(1) A dispute may be resolved either in whole or in part at the benefit review conference. If the conference results in the resolution of some of the disputed issues by mutual agreement or in a settlement, the workers' compensation specialist shall reduce the agreement or the settlement to writing. The workers' compensation specialist and each party shall sign the agreement or settlement. A settlement is not effective unless it is approved in accordance with § 50-6-206, and takes effect on the date approved.

(2) The specialist shall note in a report on unresolved issues required by this section the failure of any party to furnish documents to the specialist on request by the specialist, to cooperate in scheduling, or to provide a representative who possessed settlement authority in attendance at the conference.

(b) If the dispute is not entirely resolved at the benefit review conference, the workers' compensation specialist shall prepare a written report that also includes:

- (1) A statement of each agreed upon issue; and
- (2) A statement of each issue raised but not agreed upon.

(c) The workers' compensation specialist shall file the signed agreement and the report with the commissioner and the court, as appropriate. Any party filing an action with a court of competent jurisdiction shall notify the division of the filing at the time of the filing. After receiving the notice, the division shall file within seven (7) days with such court any report on unresolved issues pursuant to this section resulting from a benefit review conference.

**50-6-240. Approval or rejection of settlement agreements. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) A workers' compensation judge may approve a proposed settlement among the parties if:*

- (1) The settlement agreement has been signed by the parties; and*
- (2) The workers' compensation judge has determined that the employee is receiving, substantially, the benefits provided by this chapter, or, in cases subject to subsection (d), if the workers' compensation judge has determined that the settlement is in the best interest of the employee.*

*(b) A workers' compensation judge shall approve or reject settlements sub-*

*mitted to the division within three (3) business days after the settlement has been received by the division and assigned to a workers' compensation judge for consideration.*

*(c) In approving settlements, a workers' compensation judge shall consider all pertinent factors and if the injured employee is not represented by counsel, then the workers' compensation judge shall thoroughly inform the employee of the scope of benefits available under this chapter and the employee's rights and the procedures necessary to protect those rights.*

*(d) Notwithstanding any other provision of this chapter, an employee who is determined to be permanently and totally disabled shall not be allowed to compromise and settle the employee's rights to future medical benefits.*

*(e) Notwithstanding any other provision of this section, if there is a dispute between the parties as to whether a claim is compensable, or as to the amount of compensation due, the parties may settle the matter without regard to whether the employee is receiving substantially the benefits provided by this chapter; provided, that the settlement is determined by a workers' compensation judge to be in the best interest of the employee.*

**50-6-241. Maximum permanent partial disability award for causes arising on or after August 1, 1992 — Reconsideration of industrial disability issue — Awards for claims arising after July 1, 2004 — Public policy regarding legal immigration. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a)(1) For injuries arising on or after August 1, 1992, and prior to July 1, 2004, in cases where an injured employee is eligible to receive any permanent partial disability benefits, pursuant to § 50-6-207(3)(A)(i) and (F), and the pre-injury employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of injury, the maximum permanent partial disability award that the employee may receive is two and one-half (2½) times the medical impairment rating determined pursuant to the American Medical Association Guides to the Evaluation of Permanent Impairment (American Medical Association), the Manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment (American Academy of Orthopedic Surgeons), or in cases not covered by either of these, an impairment rating by any appropriate method used and accepted by the medical community. In making determinations, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition.

(2) In accordance with this section, the courts may reconsider, upon the filing of a new cause of action, the issue of industrial disability. Such reconsideration shall examine all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition. The reconsideration may be made in appropriate cases where the employee is no longer employed by the pre-injury employer and makes application to the appropriate court within one (1) year of the employee's loss of employment, if the loss of employment is within four

hundred (400) weeks of the day the employee returned to work. In enlarging a previous award, the court must give the employer credit for prior benefits paid to the employee in permanent partial disability benefits, and any new award remains subject to the maximum established in subsection (b).

(b) Subject to the factors provided in subsection (a), in cases for injuries on or after August 1, 1992, and prior to July 1, 2004, where an injured employee is eligible to receive permanent partial disability benefits, pursuant to § 50-6-207(3)(A)(i) and (F), and the pre-injury employer does not return the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of injury, the maximum permanent partial disability award that the employee may receive is six (6) times the medical impairment rating determined pursuant to the American Medical Association Guides to the Evaluation of Permanent Impairment (American Medical Association), the Manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment (American Academy of Orthopedic Surgeons), or in cases not covered by either of these, an impairment rating by any appropriate method used and accepted by the medical community. In making such determinations, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition.

(c) The multipliers established by subsections (a) and (b) are intended to be maximum limits. If the court awards a multiplier of five (5) or greater, then the court shall make specific findings of fact detailing the reasons for awarding the maximum impairment. In making the determinations, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition.

(d)(1)(A) For injuries occurring on or after July 1, 2004, in cases in which an injured employee is eligible to receive any permanent partial disability benefits either for body as a whole or for schedule member injuries, except schedule member injuries specified in § 50-6-207(3)(A)(ii)(a)-(l), (n), (q), and (r), and the pre-injury employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury, the maximum permanent partial disability benefits that the employee may receive is one and one half (1½) times the medical impairment rating determined pursuant to § 50-6-204(d)(3). In making the determinations, the court shall consider all pertinent factors, including lay and expert testimony, the employee's age, education, skills and training, local job opportunities and capacity to work at types of employment available in claimant's disabled condition.

(B)(i) If an injured employee receives benefits for body as a whole injuries pursuant to subdivision (d)(1)(A) and the employee is subsequently no longer employed by the pre-injury employer at the wage specified in subdivision (d)(1)(A) within four hundred (400) weeks of the day the employee returned to work for the pre-injury employer, the employee may seek reconsideration of the permanent partial disability benefits. Employees who continue in their employment after a reduction in pay or a reduction in hours due to economic conditions shall not be entitled to reconsideration of their claims under this section if the reduction in pay or reduction in hours affected at least fifty percent

(50%) of all hourly employees operating at or out of the same location. This provision does not apply to or include employees involved in layoffs, closures or a termination of business operations.

(ii) If an injured employee receives benefits for schedule member injuries pursuant to subdivision (d)(1)(A), and the employee is subsequently no longer employed by the pre-injury employer at the wage specified in subdivision (d)(1)(A), the employee may seek reconsideration of the permanent partial disability benefits. The right to seek the reconsideration shall extend for the number of weeks for which the employee was eligible to receive benefits under § 50-6-207, beginning with the day the employee returned to work for the pre-injury employer. Employees who continue in their employment after a reduction in pay or a reduction in hours due to economic conditions shall not be entitled to reconsideration of their claims under this section if the reduction in pay or reduction in hours affected at least fifty percent (50%) of all hourly employees operating at or out of the same location. This provision does not apply to or include employees involved in layoffs, closures or a termination of business operations.

(iii) Notwithstanding this subdivision (d)(1)(B), under no circumstances shall an employee be entitled to reconsideration when the loss of employment is due to either:

- (a) The employee's voluntary resignation or retirement; provided, however, that the resignation or retirement does not result from the work-related disability that is the subject of such reconsideration; or
- (b) The employee's misconduct connected with the employee's employment.

(iv) To seek reconsideration pursuant to subdivision (d)(B)(i) or (d)(B)(ii), the employee shall first request a benefit review conference within one (1) year of the date on which the employee ceased to be employed by the pre-injury employer. If the parties are not able to reach an agreement regarding additional permanent partial disability benefits at the benefit review conference, the employee shall be entitled to file a complaint seeking reconsideration in a court of competent jurisdiction within ninety (90) days of the date of the benefit review conference. Any settlement or award of additional permanent partial disability benefits pursuant to reconsideration shall give the employer credit for prior permanent partial disability benefits paid to the employee. Any new settlement or award regarding additional permanent partial disability benefits remains subject to the maximum established in subdivision (d)(2) and shall be based on the medical impairment rating that was the basis of the previous settlement or award.

(v) Notwithstanding any other provision of law to the contrary, an employee shall not be permitted to waive or forfeit, and the parties shall not be permitted to compromise and settle, the employee's rights to reconsideration pursuant to this section.

(C)(i) Notwithstanding any other law to the contrary, for injuries occurring on or after July 1, 2009, if an injured employee receives permanent partial disability benefits for body as a whole injuries or if the injured employee receives permanent partial disability benefits for schedule member injuries pursuant to subdivision (d)(1)(A) and the pre-injury employer is sold or acquired subsequent to the receipt of the permanent partial disability benefits, then the injured employee shall

not be entitled to seek reconsideration:

(a) Provided, that the injured employee continues to be employed by the successor employer at the same or higher pay; or

(b) If the employee declines an offer of employment with the successor employer at the same or higher pay.

(ii) Notwithstanding subdivision (d)(1)(C)(i), an injured employee shall be entitled to seek reconsideration:

(a) From the successor employer within four hundred (400) weeks of the day the employee returned to work for the pre-injury employer, if the injured employee received permanent partial disability benefits for body as a whole injuries from the pre-injury employer pursuant to subdivision (d)(1)(A) and the injured employee is no longer employed by the successor employer at the same or higher pay; or

(b) From the successor employer within the number of weeks for which the employee was eligible to receive benefits from the pre-injury employer under § 50-6-207, to be calculated from the day the employee returned to work for the pre-injury employer, if the injured employee received permanent partial disability benefits for schedule member injuries from the pre-injury employer pursuant to subdivision (d)(1)(A) and the injured employee is no longer employed by the successor employer at the same or higher pay.

(iii) Any additional permanent partial disability benefits to which the injured employee is entitled pursuant to subdivision (d)(1)(C)(ii) shall be paid by the successor employer or the insurance carrier for the successor employer.

(iv) If an injured employee is entitled to seek reconsideration pursuant to this subdivision (d)(1)(C), then the employee shall first request a benefit review conference within one (1) year of the date on which the employee ceased to be employed by the successor employer. If the parties are not able to reach an agreement regarding additional permanent partial disability benefits at the benefit review conference, then the employee shall be entitled to file a complaint against the successor employer seeking reconsideration in a court of competent jurisdiction within ninety (90) days of the date of the benefit review conference. Any settlement or award of additional permanent partial disability benefits pursuant to reconsideration shall give the successor employer credit for the prior permanent partial disability benefits paid by the pre-injury employer to the employee. Any new settlement or award regarding additional permanent partial disability benefits shall be subject to the maximum established in subdivision (d)(2).

(2)(A) For injuries arising on or after July 1, 2004, in cases in which the pre-injury employer did not return the injured employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury, the maximum permanent partial disability benefits that the employee may receive for body as a whole and schedule member injuries subject to subdivision (d)(1)(A) may not exceed six (6) times the medical impairment rating determined pursuant to the provisions of § 50-6-204(d)(3). The maximum permanent partial disability benefits to which the employee is entitled shall be computed utilizing the appropriate maximum number of weeks as set forth in § 50-6-207 for the type of injury sustained by the employee. In making such determinations, the court shall

consider all pertinent factors, including lay and expert testimony, the employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition.

(B) If the court awards a permanent partial disability percentage that equals or exceeds five (5) times the medical impairment rating, the court shall include specific findings of fact in the order that detail the reasons for awarding the maximum permanent partial disability.

(e)(1) It is the intent of the general assembly to adopt as public policy for this state specific provisions related to workers' compensation to preserve the tradition of legal immigration while seeking to close the door to illegal workers in this state and to encourage the employers of this state to comply with federal immigration laws in the hiring or continued employment of individuals who are not eligible or authorized to work in the United States.

(2) The general assembly takes notice that federal law prohibits a pre-injury employer from permitting an employee to return to work following the work-related injury when the employee is not eligible or authorized to work in the United States pursuant to federal immigration laws; and, therefore, the general assembly adopts the following as the compensation to which such an employee is entitled for permanent partial disability benefits:

(A) For injuries occurring on or after July 1, 2009, in cases in which an injured employee is eligible to receive any permanent partial disability benefits either for body as whole or schedule member injuries, the maximum permanent partial disability benefits that the employee may receive is up to one and one half (1 ½) times the medical impairment rating determined pursuant to § 50-6-204(d)(3); provided, that the employer did not knowingly hire the employee at a time when the employee was not eligible or authorized to work in the United States under federal immigration laws. It shall be presumed the employer did not knowingly hire the employee at a time when the employee was not eligible or authorized to work in the United States under federal immigration laws if the employer can show, by a preponderance of the evidence, that the employer in good faith complied with the employment eligibility and identity verification requirements of federal law when the employee was hired:

(i) By ensuring the employee completed Section 1 of Form I-9 at the time the employee started to work;

(ii) By reviewing the documents provided by the employee to establish the employee's identity and eligibility to work;

(iii) By making a good faith determination that the documents presented by the employee for employment and identity authorization appeared to relate to the employee, appeared to be genuine and that the documents provided were in the list of acceptable documents on Form I-9; and

(iv) By reverifying the employment eligibility of the employee upon the expiration of the employee's work authorization and by completing Section 3 of Form I-9, if applicable;

(B) The presumption established in subdivision (e)(2)(A) may be rebutted if the employee can show, by a preponderance of the evidence, that the employer had actual knowledge of the ineligible or unauthorized status of the employee at the time of hire or at the time of the injury, or both. If the presumption is rebutted, a sum of up to five (5) times the medical impairment rating determined by the authorized treating physician

pursuant to § 50-6-204(d)(3) shall be paid in the following manner:

- (i) A sum up to one and one half (1 ½) times the medical impairment rating shall be paid in a lump sum to the employee, the sum to be paid by the employer's insurer; and
- (ii) An additional sum up to three and one half (3 ½) times the medical impairment rating shall be paid by the employer, in a lump sum into, and shall become a part of, the uninsured employers fund created by § 50-6-801; provided, that the sum shall not be paid by the employer's insurer.

**50-6-241. Maximum permanent partial disability award for causes arising on or after August 1, 1992 — Reconsideration of industrial disability issue — Awards for claims arising after July 1, 2004 — Public policy regarding legal immigration. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

(a) *[Deleted by 2013 amendment, effective July 1, 2014.]*

(b) *[Deleted by 2013 amendment, effective July 1, 2014.]*

(c) *[Deleted by 2013 amendment, effective July 1, 2014.]*

(d)(1)(A) *For injuries occurring on or after July 1, 2004, but before July 1, 2014, in cases in which an injured employee is eligible to receive any permanent partial disability benefits either for body as a whole or for schedule member injuries, except schedule member injuries specified in § 50-6-207(3)(A)(ii)(a)-(l), (n), (q), and (r), and the pre-injury employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury, the maximum permanent partial disability benefits that the employee may receive is one and one half (1½) times the medical impairment rating determined pursuant to § 50-6-204(d)(3). In making the determinations, the court shall consider all pertinent factors, including lay and expert testimony, the employee's age, education, skills and training, local job opportunities and capacity to work at types of employment available in claimant's disabled condition.*

*(B)(i) If an injured employee receives benefits for body as a whole injuries pursuant to subdivision (d)(1)(A) and the employee is subsequently no longer employed by the pre-injury employer at the wage specified in subdivision (d)(1)(A) within four hundred (400) weeks of the day the employee returned to work for the pre-injury employer, the employee may seek reconsideration of the permanent partial disability benefits. Employees who continue in their employment after a reduction in pay or a reduction in hours due to economic conditions shall not be entitled to reconsideration of their claims under this section if the reduction in pay or reduction in hours affected at least fifty percent (50%) of all hourly employees operating at or out of the same location. This provision does not apply to or include employees involved in layoffs, closures or a termination of business operations.*

*(ii) If an injured employee receives benefits for schedule member injuries pursuant to subdivision (d)(1)(A), and the employee is subsequently no longer employed by the pre-injury employer at the wage specified in subdivision (d)(1)(A), the employee may seek reconsideration*

*of the permanent partial disability benefits. The right to seek the reconsideration shall extend for the number of weeks for which the employee was eligible to receive benefits under § 50-6-207, beginning with the day the employee returned to work for the pre-injury employer. Employees who continue in their employment after a reduction in pay or a reduction in hours due to economic conditions shall not be entitled to reconsideration of their claims under this section if the reduction in pay or reduction in hours affected at least fifty percent (50%) of all hourly employees operating at or out of the same location. This provision does not apply to or include employees involved in layoffs, closures or a termination of business operations.*

*(iii) Notwithstanding this subdivision (d)(1)(B), under no circumstances shall an employee be entitled to reconsideration when the loss of employment is due to either:*

*(a) The employee's voluntary resignation or retirement; provided, however, that the resignation or retirement does not result from the work-related disability that is the subject of such reconsideration; or*

*(b) The employee's misconduct connected with the employee's employment.*

*(iv) To seek reconsideration pursuant to subdivision (d)(B)(i) or (d)(B)(ii), the employee shall first request a benefit review conference within one (1) year of the date on which the employee ceased to be employed by the pre-injury employer. If the parties are not able to reach an agreement regarding additional permanent partial disability benefits at the benefit review conference, the employee shall be entitled to file a complaint seeking reconsideration in a court of competent jurisdiction within ninety (90) days of the date of the benefit review conference. Any settlement or award of additional permanent partial disability benefits pursuant to reconsideration shall give the employer credit for prior permanent partial disability benefits paid to the employee. Any new settlement or award regarding additional permanent partial disability benefits remains subject to the maximum established in subdivision (a)(2) and shall be based on the medical impairment rating that was the basis of the previous settlement or award.*

*(v) Notwithstanding any other provision of law to the contrary, an employee shall not be permitted to waive or forfeit, and the parties shall not be permitted to compromise and settle, the employee's rights to reconsideration pursuant to this section.*

*(C)(i) Notwithstanding any other law to the contrary, for injuries occurring on or after July 1, 2009, but before July 1, 2014, if an injured employee receives permanent partial disability benefits for body as a whole injuries or if the injured employee receives permanent partial disability benefits for schedule member injuries pursuant to subdivision (d)(1)(A) and the pre-injury employer is sold or acquired subsequent to the receipt of the permanent partial disability benefits, then the injured employee shall not be entitled to seek reconsideration:*

*(a) Provided, that the injured employee continues to be employed by the successor employer at the same or higher pay; or*

*(b) If the employee declines an offer of employment with the successor employer at the same or higher pay.*

*(ii) Notwithstanding subdivision (d)(1)(C)(i), an injured employee*

*shall be entitled to seek reconsideration:*

*(a) From the successor employer within four hundred (400) weeks of the day the employee returned to work for the pre-injury employer, if the injured employee received permanent partial disability benefits for body as a whole injuries from the pre-injury employer pursuant to subdivision (d)(1)(A) and the injured employee is no longer employed by the successor employer at the same or higher pay; or*

*(b) From the successor employer within the number of weeks for which the employee was eligible to receive benefits from the pre-injury employer under § 50-6-207, to be calculated from the day the employee returned to work for the pre-injury employer, if the injured employee received permanent partial disability benefits for schedule member injuries from the pre-injury employer pursuant to subdivision (d)(1)(A) and the injured employee is no longer employed by the successor employer at the same or higher pay.*

*(iii) Any additional permanent partial disability benefits to which the injured employee is entitled pursuant to subdivision (d)(1)(C)(ii) shall be paid by the successor employer or the insurance carrier for the successor employer.*

*(iv) If an injured employee is entitled to seek reconsideration pursuant to this subdivision (d)(1)(C), then the employee shall first request a benefit review conference within one (1) year of the date on which the employee ceased to be employed by the successor employer. If the parties are not able to reach an agreement regarding additional permanent partial disability benefits at the benefit review conference, then the employee shall be entitled to file a complaint against the successor employer seeking reconsideration in a court of competent jurisdiction within ninety (90) days of the date of the benefit review conference. Any settlement or award of additional permanent partial disability benefits pursuant to reconsideration shall give the successor employer credit for the prior permanent partial disability benefits paid by the pre-injury employer to the employee. Any new settlement or award regarding additional permanent partial disability benefits shall be subject to the maximum established in subdivision (d)(2).*

*(2)(A) For injuries arising on or after July 1, 2004, but before July 1, 2014, in cases in which the pre-injury employer did not return the injured employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury, the maximum permanent partial disability benefits that the employee may receive for body as a whole and schedule member injuries may not exceed six (6) times the medical impairment rating determined pursuant to § 50-6-204(d)(3). The maximum permanent partial disability benefits to which the employee is entitled shall be computed utilizing the appropriate maximum number of weeks as set forth in § 50-6-207 for the type of injury sustained by the employee. In making such determinations, the court shall consider all pertinent factors, including lay and expert testimony, the employee's age, education, skills and training, local job opportunities, and capacity to work at the types of employment available in claimant's disabled condition.*

*(B) If the court awards a permanent partial disability percentage that equals or exceeds five (5) times the medical impairment rating, the court shall include specific findings of fact in the order that detail the reasons for*

*awarding the maximum permanent partial disability.*

*(e)(1) It is the intent of the general assembly to adopt as public policy for this state specific provisions related to workers' compensation to preserve the tradition of legal immigration while seeking to close the door to illegal workers in this state and to encourage the employers of this state to comply with federal immigration laws in the hiring or continued employment of individuals who are not eligible or authorized to work in the United States.*

*(2) The general assembly takes notice that federal law prohibits a pre-injury employer from permitting an employee to return to work following the work-related injury when the employee is not eligible or authorized to work in the United States pursuant to federal immigration laws; and, therefore, the general assembly adopts the following as the compensation to which such an employee is entitled for permanent partial disability benefits:*

*(A) For injuries occurring on or after July 1, 2009, but before July 1, 2014, in cases in which an injured employee is eligible to receive any permanent partial disability benefits either for body as whole or schedule member injuries, the maximum permanent partial disability benefits that the employee may receive is up to one and one half (1 ½) times the medical impairment rating determined pursuant to § 50-6-204(d)(3); provided, that the employer did not knowingly hire the employee at a time when the employee was not eligible or authorized to work in the United States under federal immigration laws. It shall be presumed the employer did not knowingly hire the employee at a time when the employee was not eligible or authorized to work in the United States under federal immigration laws if the employer can show, by a preponderance of the evidence, that the employer in good faith complied with the employment eligibility and identity verification requirements of federal law when the employee was hired:*

*(i) By ensuring the employee completed Section 1 of Form I-9 at the time the employee started to work;*

*(ii) By reviewing the documents provided by the employee to establish the employee's identity and eligibility to work;*

*(iii) By making a good faith determination that the documents presented by the employee for employment and identity authorization appeared to relate to the employee, appeared to be genuine and that the documents provided were in the list of acceptable documents on Form I-9; and*

*(iv) By reverifying the employment eligibility of the employee upon the expiration of the employee's work authorization and by completing Section 3 of Form I-9, if applicable;*

*(B) The presumption established in subdivision (e)(2)(A) may be rebutted if the employee can show, by a preponderance of the evidence, that the employer had actual knowledge of the ineligible or unauthorized status of the employee at the time of hire or at the time of the injury, or both. If the presumption is rebutted, a sum of up to five (5) times the medical impairment rating determined by the authorized treating physician pursuant to § 50-6-204(d)(3) shall be paid in the following manner:*

*(i) A sum up to one and one half (1 ½) times the medical impairment rating shall be paid in a lump sum to the employee, the sum to be paid by the employer's insurer; and*

*(ii) An additional sum up to three and one half (3 ½) times the medical impairment rating shall be paid by the employer, in a lump sum into,*

*and shall become a part of, the uninsured employers fund created by § 50-6-801; provided, that the sum shall not be paid by the employer's insurer.*

**50-6-242. Award of permanent partial disability benefits for permanent medical impairment in certain cases — Illegal immigrants ineligible. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) For injuries that occur on or after August 1, 1992, and prior to July 1, 2004, notwithstanding any provision of this chapter to the contrary, the trial judge may award employees permanent partial disability benefits, not to exceed four hundred (400) weeks, in appropriate cases where permanent medical impairment is found and the employee is eligible to receive the maximum disability award under § 50-6-241(a)(2) or (b). In those cases the court, on the date of maximum medical improvement, must make a specific documented finding, supported by clear and convincing evidence, of at least three (3) of the following four (4) items:

- (1) The employee lacks a high school diploma or general equivalency diploma or the employee cannot read or write on a grade eight (8) level;
- (2) The employee is fifty-five (55) years of age or older;
- (3) The employee has no reasonably transferable job skills from prior vocational background and training; and
- (4) The employee has no reasonable employment opportunities available locally considering the employee's permanent medical condition.

(b) For those injuries that occur on or after July 1, 2004, and notwithstanding any provision of this chapter to the contrary and in appropriate cases where the employee is eligible to receive the maximum permanent partial disability award under § 50-6-241(d)(1)(B) or (d)(2), the employee may receive disability benefits not to exceed the appropriate maximum number of weeks as set forth in § 50-6-207 for the type of injury sustained by the employee. In those cases, the court or the workers' compensation specialist shall make specific documented findings, supported by clear and convincing evidence, that as of the date of the award or settlement, at least three (3) of the following facts concerning the employee are true:

- (1) The employee lacks a high school diploma or general equivalency diploma or the employee cannot read or write on a grade eight (8) level;
- (2) The employee is fifty-five (55) years of age or older;
- (3) The employee has no reasonably transferable job skills from prior vocational background and training; and
- (4) The employee has no reasonable employment opportunities available locally considering the employee's permanent medical condition.

(c) Subsections (a) and (b) shall not apply to injuries sustained on or after July 1, 2009, by an employee who is not eligible or authorized to work in the United States under federal immigration laws.

**50-6-242. Additional disability benefits — Award of permanent partial disability benefits for permanent medical impairment in certain cases — Specific documented findings required — Employees not eligible or authorized to work in the United States under federal immigration laws are ineligible. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) For those injuries that occur on or after July 1, 2014, in appropriate cases where the employee has not returned to work and is entitled to additional benefits under § 50-6-207(3)(B), the employee may receive additional disability benefits not to exceed the maximum number of weeks as set forth in § 50-6-207(2)(B). In such cases, the court or the workers' compensation judge shall make specific documented findings, supported by clear and convincing evidence, that as of the date of the award or settlement, at least three (3) of the following facts concerning the employee are true:*

- (1) The employee lacks a high school diploma or general equivalency diploma, or the employee cannot read or write on a grade eight (8) level;*
- (2) The employee is fifty-five (55) years of age or older;*
- (3) The employee has no reasonably transferable job skills from prior vocational background and training; and*
- (4) The employee has no reasonable employment opportunities available locally considering the employee's permanent medical condition.*

*(b) For those injuries that occur on or after July 1, 2004, and notwithstanding any provision of this chapter to the contrary and in appropriate cases where the employee is eligible to receive the maximum permanent partial disability award under § 50-6-207(3)(B), the employee may receive disability benefits not to exceed the appropriate maximum number of weeks as set forth in § 50-6-207 for the type of injury sustained by the employee. In those cases, the workers' compensation judge shall make specific documented findings, supported by clear and convincing evidence, that as of the date of the award or settlement, at least three (3) of the following facts concerning the employee are true:*

- (1) The employee lacks a high school diploma or general equivalency diploma or the employee cannot read or write on a grade eight (8) level;*
- (2) The employee is fifty-five (55) years of age or older;*
- (3) The employee has no reasonably transferable job skills from prior vocational background and training; and*
- (4) The employee has no reasonable employment opportunities available locally considering the employee's permanent medical condition.*

*(c) Subsections (a) and (b) shall not apply to injuries sustained on or after July 1, 2009, by an employee who is not eligible or authorized to work in the United States under federal immigration laws.*

**50-6-243. Agreements to receive payments greater than the schedule provides — Applicability. [Effective until July 1, 2014.]**

*(a) An employee may sign an agreement before or after an injury resulting in temporary total disability due to an accident arising out of and in the course of employment in which the employee may receive from the employer, for up to six (6) months after the date of injury, an amount greater than the schedule of compensation for the injury in § 50-6-207. Any agreed payment that is greater than the amount provided by § 50-6-207 shall be credited as an offset to any subsequent award or settlement for permanent partial disability, permanent*

total disability, or death benefits.

(b) If the employee's temporary total disability exceeds six (6) months from the date of injury, any payments greater than those provided by § 50-6-207, made after that date, shall not be credited as an offset to any subsequent award or settlement for permanent partial disability, permanent total disability, or death benefits.

(c) This section applies to employees of municipalities, counties, and other governmental entities.

**50-6-244. Statistical data form for assessment of workers' compensation system — Penalty for noncompliance. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) The department shall develop a statistical data form for collecting data relevant to assessing the workers' compensation system. In developing or altering the form, the department shall seek written comment from the advisory council on workers' compensation and the administrative office of the courts. The commissioner shall submit the proposed form to the commerce and labor committee of the senate, and the consumer and human resources committee of the house of representatives, together with any written comments of the advisory council on workers' compensation and the administrative office of the courts, prior to submission of a proposed rule to the attorney general and reporter. The commissioner shall promulgate the form by rule, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b)(1) A statistical data form shall be filed for every workers' compensation matter that is concluded by settlement, whether approved by a court or the department. A statistical data form shall be filed for every workers' compensation matter that is concluded by a trial so that the form reflects the trial court's ruling and information that is current as of the date the trial order is submitted to the court for approval, whether or not an appeal of the matter is anticipated or filed. A statistical data form shall be either typed or completed by computer using a form available on the website of the division of workers' compensation.

(2) A statistical data form is not required to be filed in cases that involve reconsideration of a prior settlement or trial judgment order for which a statistical data form was filed at the time of submission of the prior order. A statistical data form is not required to be filed if the only issue resolved by an order is the closing of future medical benefits that remained open pursuant to a prior order for which a statistical data form was filed at the time of submission of the prior order.

(3) In cases involving a workers' compensation settlement that is approved by a court, the completed statistical data form shall be filed at the same time as the order approving the settlement is filed and shall be filed with the clerk of the court in which the settlement order is filed. A clerk of the court shall not accept a settlement order for filing, unless it is accompanied by a fully completed statistical data form.

(4) In cases involving a workers' compensation case that is resolved by trial, the completed statistical data form shall be filed at the same time as the final order is submitted to the trial court for approval and shall be filed with the clerk of the court in which the matter was tried. A clerk of the court shall not accept a trial order for filing, unless it is accompanied by a fully

completed statistical data form.

(5) A settlement order of a court in a workers' compensation matter is not final until the statistical data form required by this section is fully completed and filed with the appropriate clerk of the court.

(6) A workers' compensation trial order is not final until the statistical data form required by this section is fully completed and filed with the appropriate clerk of the court. In the event of an appeal of a workers' compensation trial verdict to the supreme court of Tennessee, this section shall neither abrogate nor supercede the Rules of Appellate Procedure regarding the computation of the time for the proper filing of a notice of appeal. The information submitted in the statistical data form shall not be admissible on appeal for any purpose.

(c) The clerk of the court shall forward to the administrator of the division of workers' compensation, on or before the tenth day of each calendar month, all workers' compensation statistical data forms filed with the clerk during the preceding calendar month.

(d) In cases involving a workers' compensation settlement that is submitted to the department for approval, the statistical data form required by this section shall also be completed and submitted to the department at the time of the submission of the settlement for approval. A settlement approved by the department shall not become final until the statistical data form required by this section is fully completed and received by the department.

(e) It is the responsibility of the employer or the employer's agent to complete and file the form required by this section, contemporaneously with the filing of the final order or settlement. The employee and any agent of the employee are required to cooperate with the employer in completing this form.

(f)(1) If the commissioner or the commissioner's designee determines that an insurer or self-insured employer fails to complete substantially and file the statistical data forms with such frequency as to indicate a general business practice, the commissioner may assess a monetary penalty against the insurance company for the employer or against the employer, if self insured. The amount of the monetary penalty shall not exceed one hundred dollars (\$100). For the purposes of this subsection (f), "general business practice" means an insurer or self-insured employer fails to complete substantially and file a statistical data form more than five (5) times.

(2) No monetary penalty may be assessed by the commissioner, or the commissioner's designee, with respect to a form that has been filed with the division of workers' compensation for more than ninety (90) days. No monetary penalty may be assessed for a statistical data form that was not filed with the court clerk more than ninety (90) days from the date of entry of the final order of the court. No monetary penalty may be assessed due to the failure to provide information on the statistical data form that is solely within the knowledge of the employee or due solely to the failure of the employee to sign the form.

(3) An insurance company or self insured employer assessed a monetary penalty by the commissioner pursuant to this subsection (f), may appeal the penalty under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The commissioner, or an agency member appointed by the commissioner, shall have the authority to hear as a contested case an administrative appeal of any monetary penalty assessed pursuant to this subsection (f).

**50-6-244. Statistical data form for assessment of workers' compensation system — Penalty for noncompliance. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) The department shall develop a statistical data form for collecting data relevant to assessing the workers' compensation system. In developing or altering the form, the department shall seek written comment from the advisory council on workers' compensation and the administrative office of the courts. The administrator shall submit the proposed form to the commerce and labor committee of the senate, and the consumer and human resources committee of the house of representatives, together with any written comments of the advisory council on workers' compensation and the administrative office of the courts, prior to submission of a proposed rule to the attorney general and reporter. The administrator shall promulgate the form by rule, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.*

*(b)(1) A statistical data form shall be filed for every workers' compensation matter that is concluded by settlement, whether approved by a court or the department. A statistical data form shall be filed for every workers' compensation matter that is concluded by a trial so that the form reflects the trial court's ruling and information that is current as of the date the trial order is submitted to the court for approval, whether or not an appeal of the matter is anticipated or filed. A statistical data form shall be either typed or completed by computer using a form available on the website of the division of workers' compensation.*

*(2) A statistical data form is not required to be filed in cases that involve reconsideration of a prior settlement or trial judgment order for which a statistical data form was filed at the time of submission of the prior order. A statistical data form is not required to be filed if the only issue resolved by an order is the closing of future medical benefits that remained open pursuant to a prior order for which a statistical data form was filed at the time of submission of the prior order.*

*(3) In cases involving a workers' compensation settlement that is approved by a court, the completed statistical data form shall be filed at the same time as the order approving the settlement is filed and shall be filed with the clerk of the court in which the settlement order is filed. A clerk of the court shall not accept a settlement order for filing, unless it is accompanied by a fully completed statistical data form.*

*(4) In cases involving a workers' compensation case that is resolved by trial, the completed statistical data form shall be filed at the same time as the final order is submitted to the trial court for approval and shall be filed with the clerk of the court in which the matter was tried. A clerk of the court shall not accept a trial order for filing, unless it is accompanied by a fully completed statistical data form.*

*(5) A settlement order of a court in a workers' compensation matter is not final until the statistical data form required by this section is fully completed and filed with the appropriate clerk of the court.*

*(6) A workers' compensation trial order is not final until the statistical data form required by this section is fully completed and filed with the appropriate clerk of the court. In the event of an appeal of a workers' compensation trial verdict to the supreme court of Tennessee, this section shall neither abrogate nor supercede the Rules of Appellate Procedure*

*regarding the computation of the time for the proper filing of a notice of appeal. The information submitted in the statistical data form shall not be admissible on appeal for any purpose.*

*(c) The clerk of the court shall forward to the administrator of the division of workers' compensation, on or before the tenth day of each calendar month, all workers' compensation statistical data forms filed with the clerk during the preceding calendar month.*

*(d) In cases involving a workers' compensation settlement that is submitted to the department for approval, the statistical data form required by this section shall also be completed and submitted to the department at the time of the submission of the settlement for approval. A settlement approved by the department shall not become final until the statistical data form required by this section is fully completed and received by the department.*

*(e) It is the responsibility of the employer or the employer's agent to complete and file the form required by this section, contemporaneously with the filing of the final order or settlement. The employee and any agent of the employee are required to cooperate with the employer in completing this form.*

*(f)(1) If the administrator or the administrator's designee determines that an insurer or self-insured employer fails to complete substantially and file the statistical data forms with such frequency as to indicate a general business practice, the administrator may assess a monetary penalty against the insurance company for the employer or against the employer, if self insured. The amount of the monetary penalty shall not exceed one hundred dollars (\$100). For the purposes of this subsection (f), "general business practice" means an insurer or self-insured employer fails to complete substantially and file a statistical data form more than five (5) times.*

*(2) No monetary penalty may be assessed by the administrator, or the administrators's designee, with respect to a form that has been filed with the division of workers' compensation for more than ninety (90) days. No monetary penalty may be assessed for a statistical data form that was not filed with the court clerk more than ninety (90) days from the date of entry of the final order of the court. No monetary penalty may be assessed due to the failure to provide information on the statistical data form that is solely within the knowledge of the employee or due solely to the failure of the employee to sign the form.*

*(3) An insurance company or self insured employer assessed a monetary penalty by the administrator pursuant to this subsection (f), may appeal the penalty under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The administrator, or an agency member appointed by the administrator, shall have the authority to hear as a contested case an administrative appeal of any monetary penalty assessed pursuant to this subsection (f).*

#### **50-6-246. Rules and regulations governing medical impairment rating. [Effective until July 1, 2014.]**

To assure employees, employers and the department have the information necessary to resolve a workers' compensation claim and to effectuate the legislative intent of § 50-6-241, the commissioner of labor and workforce development shall establish rules, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to govern the provision of

a medical impairment rating required by § 50-6-204(d)(3)(A). The commissioner shall promulgate these rules in conjunction with the advisory council on workers' compensation. The rules required by this section shall take effect on October 1, 2008. The commissioner is authorized to use public necessity rules under § 4-5-209(a)(4) or emergency rules under § 4-5-208, as appropriate, in order to have such rules in effect no later than October 1, 2008.

**50-6-301. "Occupational diseases" defined. [Effective until July 1, 2014.]**

(a) As used in this chapter, "occupational diseases" means all diseases arising out of and in the course of employment. A disease shall be deemed to arise out of the employment only if:

- (1) It can be determined to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;
- (2) It can be fairly traced to the employment as a proximate cause;
- (3) It has not originated from a hazard to which workers would have been equally exposed outside of the employment;
- (4) It is incidental to the character of the employment and not independent of the relation of employer and employee;
- (5) It originated from a risk connected with the employment and flowed from that source as a natural consequence, though it need not have been foreseen or expected prior to its contraction; and
- (6) There is a direct causal connection between the conditions under which the work is performed and the occupational disease. Diseases of the heart, lung, and hypertension arising out of and in the course of any type of employment shall be deemed to be occupational diseases.

(b) Cumulative trauma conditions, hearing loss, carpal tunnel syndrome, and all other repetitive motion conditions shall not be considered an occupational disease unless such conditions arose primarily out of and in the course and scope of employment. The opinion of the physician, selected by the employee from the employer's designated panel of physicians pursuant to §§ 50-6-204(a)(4)(A) or (a)(4)(B), shall be presumed correct on the issue of causation but said presumption shall be rebutted by a preponderance of the evidence.

**50-6-401. Authority to write insurance — Tax.**

(a)(1)(A) Every person, partnership, association, organization or corporation, whether organized under the laws of this or any other state or country, that has or may hereafter comply with the laws of this state and is authorized to write accident or indemnity insurance in this state shall be authorized and empowered to write workers' compensation insurance under the terms and provisions of this part, and likewise every reciprocal and mutual insurance association or corporation shall have the same privileges; provided, that any such entity offering workers' compensation insurance shall be required to offer medical benefits coverage for paid-on-call and volunteer firefighters.

(B) For purposes of this subdivision (a)(1), "volunteer firefighter" means any member or personnel of a fire department, volunteer fire department, rescue squad or volunteer rescue squad, including, but not limited to, a junior member, a board member or an auxiliary member of the department

or squad.

(2) An entity offering workers' compensation insurance shall offer coverage for members of rescue squads on similar terms and conditions as coverage available to full-time paid firefighters or emergency medical services personnel.

(b)(1) All insurance carriers provided for by this section shall be subject to a tax of four percent (4%) on premiums collected for workers' compensation insurance, and a surcharge of four tenths of one percent (0.4%) of the premiums, the surcharge to be earmarked for the administration of the Tennessee Occupational Safety and Health Act, compiled in chapter 3 of this title, and this shall be in lieu of any other tax on premiums for the writing of the business of workers' compensation insurance now provided for by law.

(2) The surcharge of four tenths of one percent (0.4%) on the tax on workers' compensation insurance premiums levied by this section shall not apply to any employer who employs ten (10) or fewer employees unless the employer is in the business of construction or manufacturing.

(c) Of the funds collected pursuant to subsection (b), a sum sufficient shall be allocated from and equal to an amount not greater than fifty percent (50%) of the revenues derived from the premium tax levied pursuant to this section, and shall be paid into the second injury fund created in § 50-6-208, to provide payments for the benefits provided in § 50-6-208.

#### **50-6-402. Classification of risks and premiums — Filing — Approval.**

(a) In determining classifications of risks and premiums relating to the classification, the insurer may include allowances of any character made to any employee, only when the allowances are in lieu of wages, and are specified as part of the wage contract.

(b) Before approving any workers' compensation loss cost filing made by the designated rate service organization pursuant to this part or title 56, the commissioner of commerce and insurance shall consult with the advisory council on workers' compensation concerning the filing. The council shall have sixty (60) days to provide written comment on the filing. The council shall meet to provide the comment. The commissioner of commerce and insurance shall approve, disapprove or modify the filing within ninety (90) days of receiving the filing. If the commissioner of commerce and insurance modifies the filing, the modification shall be within the range established by the recommendation of the rate service organization in its filing and the recommendation of the advisory council on workers' compensation. In instances when the commissioner of commerce and insurance modifies the filing, the rate service organization shall develop a plan that reflects the commissioner's modification, unless the organization appeals the modification pursuant to § 56-5-308. The commissioner shall report the action taken on the filing to the commerce and labor committee of the senate, and the consumer and human resources committee of the house of representatives and to the speakers of the senate and the house of representatives.

(c) Prior to the commissioner of commerce and insurance establishing the multiplier to be applied to the assigned risk plan, as provided in § 56-5-314(c), the commissioner shall provide notice of the intended action, including supporting rationale for the action, to the advisory council on workers' compensation. The council may, within fifteen (15) days of receipt of the notice,

provide written comment and recommendation to the commissioner related to the intended action. After the fifteen-day period has expired, the commissioner shall establish the multiplier, by order, as provided in § 56-5-314(c).

(d) The commissioner of commerce and insurance shall report quarterly to the advisory council on workers' compensation concerning all workers' compensation filings made by the designated rate service organization received by the department of commerce and insurance that were not referred to the council as set out in subsection (b) since the last report.

**50-6-405. Compensation insurance or proof of financial ability required — Self insurers — Payment of premiums — Excess catastrophe reinsurance coverage — Authority and duty of commissioner. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) Every employer under and affected by this chapter, shall:

(1) Insure and keep insured the employer's liability under this chapter in some person or persons, association, organization or corporation authorized to transact the business of workers' compensation insurance in this state; or

(2) Possess a valid certificate of authority from the commissioner of commerce and insurance by furnishing satisfactory proof of the employer's financial ability to pay all claims that may arise against the employer under this chapter and guarantee the payment of the claims in the amount and manner and when due as provided for in this chapter.

(b) If the employer elects to proceed under subdivision (a)(2), the commissioner of commerce and insurance shall require the applicant to pay a nonrefundable application fee of five hundred dollars (\$500) or in an amount the commissioner shall promulgate by rule. The commissioner of commerce and insurance shall require the applicant to file and maintain with the department of commerce and insurance the following:

(1) Security, in an amount to be determined by the commissioner of commerce and insurance, but not less than five hundred thousand dollars (\$500,000), in any of the following forms, as specified herein: negotiable securities; a surety bond; a certificate of deposit; or a letter of credit.

(A) The security, or a contract between the self-insured employer, a depository institution and the commissioner of commerce and insurance evidencing the security held in the depository institution for purposes of compliance with this section, shall be held by the commissioner of commerce and insurance and shall be conditioned to run solely and directly for the benefit of the employees of the self-insured employer. Any legal actions to enforce the payment of the security being held for purposes of compliance with this section shall be brought by the commissioner of commerce and insurance for the benefit of the employees of the self-insured employer.

(B) The security held pursuant to this section may be used for the payment of any and all fees or costs required to administer the disbursement of the proceeds to or for the benefit of the employees.

(C) The venue for any suit filed by the commissioner of commerce and insurance under this provision shall be in Davidson County.

(D) [Deleted by 2009 amendment.]

(E) [Deleted by 2009 amendment.]

(F) [Deleted by 2009 amendment.]

(G) [Deleted by 2009 amendment.]

(H) [Deleted by 2009 amendment.]

(I)(i) Any security held for purposes of compliance with this section shall be held for a minimum of ten (10) years after the self-insured employer is no longer self-insured and the self-insured employer shall maintain the fair market value of security on deposit at not less than five hundred thousand dollars (\$500,000), unless otherwise approved by the commissioner of commerce and insurance or the commissioner's designee.

(ii) Any employer that is no longer self-insured pursuant to this section as of December 31, 2004, shall not be subject to subdivision (b)(1)(I).

(J) All security, and contracts evidencing the security, filed with the commissioner of commerce and insurance shall be in a form substantively that has been previously approved by the commissioner of commerce and insurance. Any security that fails to meet any requirement under this section shall not be considered for purposes of determining a self-insurer's compliance with any of the security maintenance requirements of this section;

(K) As used in this subdivision (b)(1), "qualified United States financial institution" shall have the meaning assigned by § 56-2-209(a).

(L) The commissioner of commerce and insurance may by rule establish requirements for securities posted pursuant to this subsection (b). These rules may also prescribe the various types and classes of securities that the commissioner of commerce and insurance will accept under this subsection (b).

(2) Evidence of the employer's financial ability to pay all claims that may arise against the employer in the form of an annual certified financial statement, including a statement of assets and liabilities and a statement of profit and loss, to be filed no later than the last day of the sixth month after the end of the employer's immediately preceding fiscal year. The financial statement is to include a detailed accounting for reserves for losses outstanding incurred in connection with workers' compensation self-insurance. The employer's losses and adequacy of reserves shall be certified annually by an actuary qualified under rules established by the commissioner of commerce and insurance for the filing of statements by insurance companies. Filings pursuant to this subsection (b) shall be kept confidential by the commissioner of commerce and insurance and shall not be construed to be a public record pursuant to title 10, chapter 7;

(A) The commissioner of commerce and insurance may assess a civil penalty of one hundred dollars (\$100) per day for each day any self-insured employer has failed to comply with any financial record filing requirement. The civil penalty assessed under this subdivision (b)(2)(A) shall be cumulative and in addition to any other civil penalty or remedy available to the commissioner. No civil penalty shall be assessed against any political subdivision of the state.

(B) The commissioner of commerce and insurance shall take into account all available information when making the determination as to both the adequacy of all security deposits, letters of credit, negotiable securities or bonds held by the commissioner and whether an employer

has the ability to pay all claims that may arise.

(3) No employer shall self-insure its workers' compensation liabilities without a certificate of authority issued by the commissioner of commerce and insurance. It shall be unlawful for any employer to self-insure its liabilities for workers' compensation without first obtaining a duly issued certificate of authority from the commissioner of commerce and insurance. Whenever an employer has complied with subdivisions (a)(2), (b)(1) and (b)(2), the commissioner of commerce and insurance, or the commissioner's designee, may issue to the employer a certificate of authority allowing the employer to self-insure under this section. Notice of this authorization shall be sent to the commissioner of labor and workforce development.

(4) Upon failure by an authorized self-insured employer to furnish the commissioner of commerce and insurance the requirements delineated in subdivisions (a)(2), (b)(1) and (b)(2), the commissioner may, after giving written notice and an opportunity for a hearing to the affected party or parties within thirty (30) days, suspend or revoke the certificate authorizing the employer to self-insure granted under this section. The commissioner may, without prior notice and if it appears in the commissioner's discretion that the continuation of the certificate would be clearly hazardous to the employees of the self-insurer or to the public generally, summarily suspend an authorized self-insurer's certificate before a hearing is commenced and in that event shall immediately notify the self-insurer, and the notice shall include a statement to the effect that the commissioner's action is subject to review. All hearings conducted under this section shall comply with the contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(5) Any hearing under this section shall be requested in writing by the self-insured employer within fifteen (15) days of receiving written notification from the commissioner of commerce and insurance or the commissioner's designee. In any proceeding in which the self-insured employer's certificate of authority is suspended or revoked, the self-insured employer shall pay all costs associated with the proceeding. The commissioner may serve a notice, order, petition or complaint in any action arising under this section by certified mail to the self-insured employer at the address of record in the files of the department. Notwithstanding any law to the contrary, service in the manner set forth in this subdivision (b)(5), shall be deemed to constitute actual service on the self-insured employer.

(6) The commissioner of commerce and insurance or the commissioner's designee shall immediately notify the commissioner of labor and workforce development of any decision to suspend or revoke a certificate authorizing an employer to self-insure.

(7) The commissioner of commerce and insurance or the commissioner's designee has the authority to examine and investigate any self-insured employer whenever the commissioner deems it prudent to do so. The purposes and scope of the examinations and the commissioner's powers shall be set forth in title 56, chapter 1, part 4, pertaining to examinations of insurance companies.

(8) The commissioner of commerce and insurance may promulgate rules and regulations, including emergency rules and regulations, necessary for the administration of this section and shall conduct all rulemaking in accordance with the Uniform Administrative Procedures Act, compiled in

title 4, chapter 5.

(c)(1) With the permission of a trade or professional association board of directors, ten (10) or more employers of the same group may enter into agreements to pool their liabilities under this chapter for the purpose of qualifying as self-insurers. The trade or professional association shall have been in active existence in Tennessee for at least five (5) years and the association shall:

(A) Have a constitution or bylaws;

(B) Have members that support the association by regular payment of dues on an annual, semiannual, quarterly or monthly basis; and

(C) Be created in good faith for purposes other than that of creating workers' compensation self-insurer pools. The commissioner of commerce and insurance has the authority to promulgate rules and regulations deemed necessary to provide for the solvency, administration and enforcement of the pooling agreements. To the extent deemed necessary by the commissioner of commerce and insurance, each employer member of the approved group shall be classified as a self-insurer as otherwise provided in this chapter.

(2) Notwithstanding any other law or rule to the contrary, funds not needed for current obligations may be invested by the board of trustees in Tennessee securities as defined in § 56-4-210(a). The board of trustees of each workers' compensation pool shall adopt an investment policy. The policy shall address credit, quality of investments, maximum maturity of investments and other matters the board deems appropriate. Real estate investments must be undertaken with the approval of the commissioner of commerce and insurance.

(3)(A) Each group of employers qualifying as self-insurers pursuant to this subsection (c) shall submit to the commissioner of commerce and insurance a statement of financial condition audited by an independent certified public accountant on or before the last day of the sixth month following the end of the group's fiscal year. A thirty-day extension of the financial statement filing requirement shall be granted by the commissioner upon receipt of a request, via certified mail, by a group. The request shall be submitted to the commissioner not less than thirty (30) days prior to the date the financial statement is due to be filed.

(B) Notwithstanding subdivision (c)(3)(A), a qualified self-insured trust that has entered into a self-insurance loss portfolio transfer agreement approved by the commissioner of commerce and insurance with an insurer licensed in this state pursuant to which all of the liabilities and obligations pooled by the group of employers of the self-insured trust for their workers' compensation and employers' liability losses, including all existing and incurred but not reported claims, is not required to annually submit a statement of financial condition audited by an independent certified public accountant; provided, that the commissioner of commerce and insurance has granted a request filed by the self-insured trust for exemption from the annual submission of an audited statement of financial condition.

(4)(A) At the request of a group of employers qualifying as self-insurers pursuant to this subsection (c), the commissioner of commerce and insurance, in the commissioner's sole discretion, may grant additional thirty-day extensions to the financial statement filing requirements for acts of God, public enemies, fire, flood, storms or similar events constituting force majeure that cause the group to require more time to meet the

filing requirements;

(B) The commissioner of commerce and insurance, after notice and an opportunity for a hearing, may revoke the certificate of approval of a group of employers qualifying as self-insurers pursuant to this subsection (c) if the group fails to comply with this subsection (c) or any rules promulgated under this subsection (c). In addition to or in lieu of revoking a certificate of approval, the commissioner may assess a civil penalty of one hundred dollars (\$100) per day for failure to timely meet the filing requirements set forth in this subsection (c). All hearings under this subsection (c) shall be conducted pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(C) Financial statements filed pursuant to this subsection (c), individual member financial statements, work papers, notes, internal documents generated by the department of commerce and insurance or any other information obtained by or disclosed to the commissioner of commerce and insurance pursuant to this chapter or any regulations promulgated under this chapter, shall be confidential and shall not be disclosed to the public. This provision, however, shall not apply to the examination report prepared by the commissioner of commerce and insurance, nor to any rebuttal to the examination reports submitted by or on behalf of the group examined. However, nothing contained in this subdivision (c)(4)(C) shall be construed as prohibiting the commissioner of commerce and insurance from disclosing the information listed in this subdivision (c)(4)(C), or any matters relating to that information, to state agencies of this or any other state, or to law enforcement officials of this or any other state or agency of the federal government at any time;

(D) Upon receipt of a request from any approved authorized agent of a group of employers qualifying as self-insurers pursuant to this subsection (c), the group shall provide a copy of the annual statement of financial condition. The agent, however, shall not further disseminate the information except for purposes of obtaining errors and omission insurance or in the exercise of due diligence of the agent on behalf of the agent's client seeking admission to the group. Further, any individual or entity obtaining a copy of the statement shall hold the information confidential and shall not share or disclose the information to any other individual or entity.

(5) All groups pooling their liabilities pursuant to this subsection (c) shall pay premium tax and surcharges at the rates set forth in § 56-4-206. Each group's premium tax and surcharge payments shall be due on or before the last day of the sixth month following the end of the group's fiscal year. Any group failing to timely pay the taxes and surcharges shall be subject to the penalties and sanctions set forth in § 56-4-216.

(6) The sponsoring trade association may determine whether or not the pool shall remain in existence, subject to the approval of the commissioner.

(7) The pool shall provide to the sponsoring trade association all information requested by the association, other than a member's financial information.

(8) The sponsoring association shall not be liable or responsible for any act or omission of the pool.

(9) The commissioner of commerce and insurance has the authority to promulgate rules and regulations that would provide for civil penalties for violations of this subsection (c) or rules promulgated under this subsection

(c).

(d)(1) It is an offense for any employer whose employee is entitled to the benefits of this chapter:

(A) To require such employee to pay any portion of the insurance premium paid by the employer; or

(B) To deduct any portion of such premium from the wages or salary of such employee.

(2) A violation of subdivision (d)(1) is a Class C misdemeanor.

(3)(A) In addition to any criminal penalty assessed for a violation of subdivision (d)(1), the commissioner is authorized to impose a civil penalty of up to an amount equal to the amount of premiums deducted from such employee's wages or salary.

(B) If a civil penalty is assessed pursuant to subdivision (d)(3)(A), the commissioner shall assess the penalty in a specific dollar amount to be paid directly to the employee.

(e) If at any time the commissioner of commerce and insurance deems the security or bond inadequate or unsafe, the commissioner shall require adequate bond or security.

(f) The commissioner of commerce and insurance may require the employer to secure excess catastrophe reinsurance coverage.

(g) This part shall not apply to policies of insurance against loss from explosions of boilers or flywheels or other similar single catastrophe hazards.

(h) The commissioner of commerce and insurance may issue rules, regulations and orders necessary to properly administer the deposits, bonds and financial evidence as required in this part.

(i) It is the duty of the commissioner of commerce and insurance and the commissioner of labor and workforce development to interchange information as to matters of mutual interest under this chapter.

**50-6-405. Compensation insurance or proof of financial ability required — Self insurers — Payment of premiums — Excess catastrophe reinsurance coverage — Authority and duty of administrator. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) Every employer under and affected by this chapter, shall:*

*(1) Insure and keep insured the employer's liability under this chapter in some person or persons, association, organization or corporation authorized to transact the business of workers' compensation insurance in this state; or*

*(2) Possess a valid certificate of authority from the commissioner of commerce and insurance by furnishing satisfactory proof of the employer's financial ability to pay all claims that may arise against the employer under this chapter and guarantee the payment of the claims in the amount and manner and when due as provided for in this chapter.*

*(b) If the employer elects to proceed under subdivision (a)(2), the commissioner of commerce and insurance shall require the applicant to pay a nonrefundable application fee of five hundred dollars (\$500) or in an amount the commissioner shall promulgate by rule. The commissioner of commerce and insurance shall require the applicant to file and maintain with the department of commerce and insurance the following:*

(1) *Security, in an amount to be determined by the commissioner of commerce and insurance, but not less than five hundred thousand dollars (\$500,000), in any of the following forms, as specified herein: negotiable securities; a surety bond; a certificate of deposit; or a letter of credit.*

(A) *The security, or a contract between the self-insured employer, a depository institution and the commissioner of commerce and insurance evidencing the security held in the depository institution for purposes of compliance with this section, shall be held by the commissioner of commerce and insurance and shall be conditioned to run solely and directly for the benefit of the employees of the self-insured employer. Any legal actions to enforce the payment of the security being held for purposes of compliance with this section shall be brought by the commissioner of commerce and insurance for the benefit of the employees of the self-insured employer.*

(B) *The security held pursuant to this section may be used for the payment of any and all fees or costs required to administer the disbursement of the proceeds to or for the benefit of the employees.*

(C) *The venue for any suit filed by the commissioner of commerce and insurance under this provision shall be in Davidson County.*

(D) *[Deleted by 2009 amendment.]*

(E) *[Deleted by 2009 amendment.]*

(F) *[Deleted by 2009 amendment.]*

(G) *[Deleted by 2009 amendment.]*

(H) *[Deleted by 2009 amendment.]*

(I)(i) *Any security held for purposes of compliance with this section shall be held for a minimum of ten (10) years after the self-insured employer is no longer self-insured and the self-insured employer shall maintain the fair market value of security on deposit at not less than five hundred thousand dollars (\$500,000), unless otherwise approved by the commissioner of commerce and insurance or the commissioner's designee.*

(ii) *Any employer that is no longer self-insured pursuant to this section as of December 31, 2004, shall not be subject to subdivision (b)(1)(I).*

(J) *All security, and contracts evidencing the security, filed with the commissioner of commerce and insurance shall be in a form substantively that has been previously approved by the commissioner of commerce and insurance. Any security that fails to meet any requirement under this section shall not be considered for purposes of determining a self-insurer's compliance with any of the security maintenance requirements of this section;*

(K) *As used in this subdivision (b)(1), "qualified United States financial institution" shall have the meaning assigned by § 56-2-209(a).*

(L) *The commissioner of commerce and insurance may by rule establish requirements for securities posted pursuant to this subsection (b). These rules may also prescribe the various types and classes of securities that the commissioner of commerce and insurance will accept under this subsection (b).*

(2) *Evidence of the employer's financial ability to pay all claims that may arise against the employer in the form of an annual certified financial statement, including a statement of assets and liabilities and a statement of profit and loss, to be filed no later than the last day of the sixth month after the end of the employer's immediately preceding fiscal year. The financial statement is to include a detailed accounting for reserves for losses outstand-*

*ing incurred in connection with workers' compensation self-insurance. The employer's losses and adequacy of reserves shall be certified annually by an actuary qualified under rules established by the commissioner of commerce and insurance for the filing of statements by insurance companies. Filings pursuant to this subsection (b) shall be kept confidential by the commissioner of commerce and insurance and shall not be construed to be a public record pursuant to title 10, chapter 7;*

*(A) The commissioner of commerce and insurance may assess a civil penalty of one hundred dollars (\$100) per day for each day any self-insured employer has failed to comply with any financial record filing requirement. The civil penalty assessed under this subdivision (b)(2)(A) shall be cumulative and in addition to any other civil penalty or remedy available to the commissioner. No civil penalty shall be assessed against any political subdivision of the state.*

*(B) The commissioner of commerce and insurance shall take into account all available information when making the determination as to both the adequacy of all security deposits, letters of credit, negotiable securities or bonds held by the commissioner and whether an employer has the ability to pay all claims that may arise.*

*(3) No employer shall self-insure its workers' compensation liabilities without a certificate of authority issued by the commissioner of commerce and insurance. It shall be unlawful for any employer to self-insure its liabilities for workers' compensation without first obtaining a duly issued certificate of authority from the commissioner of commerce and insurance. Whenever an employer has complied with subdivisions (a)(2), (b)(1) and (b)(2), the commissioner of commerce and insurance, or the commissioner's designee, may issue to the employer a certificate of authority allowing the employer to self-insure under this section. Notice of this authorization shall be sent to the administrator of the division of workers' compensation.*

*(4) Upon failure by an authorized self-insured employer to furnish the commissioner of commerce and insurance the requirements delineated in subdivisions (a)(2), (b)(1) and (b)(2), the commissioner may, after giving written notice and an opportunity for a hearing to the affected party or parties within thirty (30) days, suspend or revoke the certificate authorizing the employer to self-insure granted under this section. The commissioner may, without prior notice and if it appears in the commissioner's discretion that the continuation of the certificate would be clearly hazardous to the employees of the self-insurer or to the public generally, summarily suspend an authorized self-insurer's certificate before a hearing is commenced and in that event shall immediately notify the self-insurer, and the notice shall include a statement to the effect that the commissioner's action is subject to review. All hearings conducted under this section shall comply with the contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.*

*(5) Any hearing under this section shall be requested in writing by the self-insured employer within fifteen (15) days of receiving written notification from the commissioner of commerce and insurance or the commissioner's designee. In any proceeding in which the self-insured employer's certificate of authority is suspended or revoked, the self-insured employer shall pay all costs associated with the proceeding. The commissioner may serve a notice, order, petition or complaint in any action arising under this section by*

*certified mail to the self-insured employer at the address of record in the files of the department. Notwithstanding any law to the contrary, service in the manner set forth in this subdivision (b)(5), shall be deemed to constitute actual service on the self-insured employer.*

*(6) The commissioner of commerce and insurance or the commissioner's designee shall immediately notify the administrator of the division of workers' compensation of any decision to suspend or revoke a certificate authorizing an employer to self-insure.*

*(7) The commissioner of commerce and insurance or the commissioner's designee has the authority to examine and investigate any self-insured employer whenever the commissioner deems it prudent to do so. The purposes and scope of the examinations and the commissioner's powers shall be set forth in title 56, chapter 1, part 4, pertaining to examinations of insurance companies.*

*(8) The commissioner of commerce and insurance may promulgate rules and regulations, including emergency rules and regulations, necessary for the administration of this section and shall conduct all rulemaking in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.*

*(c)(1) With the permission of a trade or professional association board of directors, ten (10) or more employers of the same group may enter into agreements to pool their liabilities under this chapter for the purpose of qualifying as self-insurers. The trade or professional association shall have been in active existence in Tennessee for at least five (5) years and the association shall:*

*(A) Have a constitution or bylaws;*

*(B) Have members that support the association by regular payment of dues on an annual, semiannual, quarterly or monthly basis; and*

*(C) Be created in good faith for purposes other than that of creating workers' compensation self-insurer pools. The commissioner of commerce and insurance has the authority to promulgate rules and regulations deemed necessary to provide for the solvency, administration and enforcement of the pooling agreements. To the extent deemed necessary by the commissioner of commerce and insurance, each employer member of the approved group shall be classified as a self-insurer as otherwise provided in this chapter.*

*(2) Notwithstanding any other law or rule to the contrary, funds not needed for current obligations may be invested by the board of trustees in Tennessee securities as defined in § 56-4-210(a). The board of trustees of each workers' compensation pool shall adopt an investment policy. The policy shall address credit, quality of investments, maximum maturity of investments and other matters the board deems appropriate. Real estate investments must be undertaken with the approval of the commissioner of commerce and insurance.*

*(3)(A) Each group of employers qualifying as self-insurers pursuant to this subsection (c) shall submit to the commissioner of commerce and insurance a statement of financial condition audited by an independent certified public accountant on or before the last day of the sixth month following the end of the group's fiscal year. A thirty-day extension of the financial statement filing requirement shall be granted by the commissioner upon receipt of a request, via certified mail, by a group. The request shall be submitted to the commissioner not less than thirty (30) days prior to the*

*date the financial statement is due to be filed.*

*(B) Notwithstanding subdivision (c)(3)(A), a qualified self-insured trust that has entered into a self-insurance loss portfolio transfer agreement approved by the commissioner of commerce and insurance with an insurer licensed in this state pursuant to which all of the liabilities and obligations pooled by the group of employers of the self-insured trust for their workers' compensation and employers' liability losses, including all existing and incurred but not reported claims, is not required to annually submit a statement of financial condition audited by an independent certified public accountant; provided, that the commissioner of commerce and insurance has granted a request filed by the self-insured trust for exemption from the annual submission of an audited statement of financial condition.*

*(4)(A) At the request of a group of employers qualifying as self-insurers pursuant to this subsection (c), the commissioner of commerce and insurance, in the commissioner's sole discretion, may grant additional thirty-day extensions to the financial statement filing requirements for acts of God, public enemies, fire, flood, storms or similar events constituting force majeure that cause the group to require more time to meet the filing requirements;*

*(B) The commissioner of commerce and insurance, after notice and an opportunity for a hearing, may revoke the certificate of approval of a group of employers qualifying as self-insurers pursuant to this subsection (c) if the group fails to comply with this subsection (c) or any rules promulgated under this subsection (c). In addition to or in lieu of revoking a certificate of approval, the commissioner may assess a civil penalty of one hundred dollars (\$100) per day for failure to timely meet the filing requirements set forth in this subsection (c). All hearings under this subsection (c) shall be conducted pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;*

*(C) Financial statements filed pursuant to this subsection (c), individual member financial statements, work papers, notes, internal documents generated by the department of commerce and insurance or any other information obtained by or disclosed to the commissioner of commerce and insurance pursuant to this chapter or any regulations promulgated under this chapter, shall be confidential and shall not be disclosed to the public. This provision, however, shall not apply to the examination report prepared by the commissioner of commerce and insurance, nor to any rebuttal to the examination reports submitted by or on behalf of the group examined. However, nothing contained in this subdivision (c)(4)(C) shall be construed as prohibiting the commissioner of commerce and insurance from disclosing the information listed in this subdivision (c)(4)(C), or any matters relating to that information, to state agencies of this or any other state, or to law enforcement officials of this or any other state or agency of the federal government at any time;*

*(D) Upon receipt of a request from any approved authorized agent of a group of employers qualifying as self-insurers pursuant to this subsection (c), the group shall provide a copy of the annual statement of financial condition. The agent, however, shall not further disseminate the information except for purposes of obtaining errors and omission insurance or in the exercise of due diligence of the agent on behalf of the agent's client seeking admission to the group. Further, any individual or entity obtaining a copy of the statement shall hold the information confidential and shall*

*not share or disclose the information to any other individual or entity.*

*(5) All groups pooling their liabilities pursuant to this subsection (c) shall pay premium tax and surcharges at the rates set forth in § 56-4-206. Each group's premium tax and surcharge payments shall be due on or before the last day of the sixth month following the end of the group's fiscal year. Any group failing to timely pay the taxes and surcharges shall be subject to the penalties and sanctions set forth in § 56-4-216.*

*(6) The sponsoring trade association may determine whether or not the pool shall remain in existence, subject to the approval of the commissioner.*

*(7) The pool shall provide to the sponsoring trade association all information requested by the association, other than a member's financial information.*

*(8) The sponsoring association shall not be liable or responsible for any act or omission of the pool.*

*(9) The commissioner of commerce and insurance has the authority to promulgate rules and regulations that would provide for civil penalties for violations of this subsection (c) or rules promulgated under this subsection (c).*

*(d)(1) It is an offense for any employer whose employee is entitled to the benefits of this chapter:*

*(A) To require such employee to pay any portion of the insurance premium paid by the employer; or*

*(B) To deduct any portion of such premium from the wages or salary of such employee.*

*(2) A violation of subdivision (d)(1) is a Class C misdemeanor.*

*(3)(A) In addition to any criminal penalty assessed for a violation of subdivision (d)(1), the administrator of the division of workers' compensation is authorized to impose a civil penalty of up to an amount equal to the amount of premiums deducted from such employee's wages or salary.*

*(B) If a civil penalty is assessed pursuant to subdivision (d)(3)(A), the administrator of the division of workers' compensation shall assess the penalty in a specific dollar amount to be paid directly to the employee.*

*(e) If at any time the commissioner of commerce and insurance deems the security or bond inadequate or unsafe, the commissioner shall require adequate bond or security.*

*(f) The commissioner of commerce and insurance may require the employer to secure excess catastrophe reinsurance coverage.*

*(g) This part shall not apply to policies of insurance against loss from explosions of boilers or flywheels or other similar single catastrophe hazards.*

*(h) The commissioner of commerce and insurance may issue rules, regulations and orders necessary to properly administer the deposits, bonds and financial evidence as required in this part.*

*(i) It is the duty of the commissioner of commerce and insurance and the administrator of the division of workers' compensation to interchange information as to matters of mutual interest under this chapter.*

**50-6-406. Evidence of compliance to be filed — Penalty for failing to comply — Liability to employee in damages — Defenses. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) Every employer, or the employer's insurance carrier unless the employer is self-insured, subject to this chapter, shall file evidence of its compliance with § 50-6-405 with the division of workers' compensation on a form prescribed by the commissioner, within thirty (30) days after procurement or renewal of suitable workers' compensation insurance or qualification as a self-insurer.

(b) If an employer fails to comply with § 50-6-405, then during the continuance of the failure, the employer shall be liable to an injured employee either for compensation as provided in this chapter to be recovered in an action brought in a court of competent jurisdiction for that purpose, or for damages to be recovered as if this chapter had not been enacted, as the employee may elect; and in the case suit for damages is brought instead of a suit to recover compensation under this chapter, the employer, when sued, shall not be allowed to set up as a defense to the action that the employee was negligent, or that the injury was caused by negligence of a fellow servant or fellow employee, or that the employee had assumed the risk of the injury.

(c) Claim of compensation made under this chapter shall be deemed a waiver of the right to sue for damages, and the institution and prosecution to final judgment of a suit for damages shall be deemed a waiver of a right to claim compensation under this chapter.

**50-6-406. Evidence of compliance to be filed — Penalty for failing to comply — Liability to employee in damages — Defenses. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) Every employer, or the employer's insurance carrier unless the employer is self-insured, subject to this chapter, shall file evidence of its compliance with § 50-6-405 with the division of workers' compensation on a form prescribed by the administrator, within thirty (30) days after procurement or renewal of suitable workers' compensation insurance or qualification as a self-insurer.*

*(b) If an employer fails to comply with § 50-6-405, then during the continuance of the failure, the employer shall be liable to an injured employee either for compensation as provided in this chapter to be recovered in an action brought in a court of competent jurisdiction for that purpose, or for damages to be recovered as if this chapter had not been enacted, as the employee may elect; and in the case suit for damages is brought instead of a suit to recover compensation under this chapter, the employer, when sued, shall not be allowed to set up as a defense to the action that the employee was negligent, or that the injury was caused by negligence of a fellow servant or fellow employee, or that the employee had assumed the risk of the injury.*

*(c) Claim of compensation made under this chapter shall be deemed a waiver of the right to sue for damages, and the institution and prosecution to final judgment of a suit for damages shall be deemed a waiver of a right to claim compensation under this chapter.*

**50-6-407. Certificate of compliance with insurance provisions. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

Every individual, firm, association, or corporation using the services of one (1) or more persons for pay shall post and maintain in a conspicuous place on the business premises a printed notice regarding workers' compensation as prescribed by the commissioner of labor and workforce development. The notice shall include, at a minimum, a general description of the duties and obligations of both the employer and the employee under the law; the name, address and telephone number of the individual to notify in the event of a work-related injury; a toll-free number and address for the department of labor and workforce development at which employers or employees may obtain additional information; and the name, address and telephone number of a representative of the employer who can confirm whether the individual, firm, association, or corporation is subject to this chapter; and other information required through rules promulgated by the commissioner of labor and workforce development.

**50-6-407. Certificate of compliance with insurance provisions. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*Every individual, firm, association, or corporation using the services of one (1) or more persons for pay shall post and maintain in a conspicuous place on the business premises a printed notice regarding workers' compensation as prescribed by the administrator of the division of workers' compensation. The notice shall include, at a minimum, a general description of the duties and obligations of both the employer and the employee under the law; the name, address and telephone number of the individual to notify in the event of a work-related injury; a toll-free number and address for the department of labor and workforce development at which employers or employees may obtain additional information; and the name, address and telephone number of a representative of the employer who can confirm whether the individual, firm, association, or corporation is subject to this chapter; and other information required through rules promulgated by the administrator of the division of workers' compensation.*

**50-6-411. Misclassification of employees by construction service providers. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a)(1) It is a violation of this section if at any time a construction services provider, as defined in § 50-6-901, misclassifies employees to avoid proper classification for premium calculations by concealing any information pertinent to the computation and application of an experience rating modification factor or by materially understating or concealing:

- (A) The amount of the construction services provider's payroll;
- (B) The number of the construction services provider's employees; or
- (C) Any of the construction services provider's employee's duties.

(2) A construction services provider who violates subdivision (a)(1) shall be subject to a penalty issued by the commissioner or commissioner's

designee of up to the greater of one thousand dollars (\$1,000) or one and one half (1½) times the average yearly workers' compensation premium for such construction services provider based on the appropriate assigned risk plan advisory prospective loss cost and multiplier minus the premium dollars paid on the policy that was the object of the understatement or concealment.

(b) This section shall have no effect upon a construction services provider's or carrier's duty to provide benefits under this chapter or upon any of the construction services provider's or carrier's rights and defenses under this chapter, including, but not limited to, § 50-6-108.

(c) In addition to the penalties provided for in subdivision (a)(2), the department shall refer cases involving business operations that are in violation of this section to the Tennessee bureau of investigation or the appropriate district attorney general for any action deemed necessary under any applicable criminal law.

(d) An individual or entity that is not a successor-in-interest or a principal of a construction services provider who is in violation of this section shall not be liable for the monetary penalties in this section.

(e) The funds collected by the commissioner of labor and workforce development or the commissioner's designee for penalties assessed pursuant to subdivision (a)(2) shall be deposited in the employee misclassification education and enforcement fund established by § 50-6-913 to be administered by the commissioner of labor and workforce development.

**50-6-411. Misclassification of employees by construction service providers. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a)(1) It is a violation of this section if at any time a construction services provider, as defined in § 50-6-901, misclassifies employees to avoid proper classification for premium calculations by concealing any information pertinent to the computation and application of an experience rating modification factor or by materially understating or concealing:*

- (A) The amount of the construction services provider's payroll;*
- (B) The number of the construction services provider's employees; or*
- (C) Any of the construction services provider's employee's duties.*

*(2) A construction services provider who violates subdivision (a)(1) shall be subject to a penalty issued by the administrator or administrator's designee of up to the greater of one thousand dollars (\$1,000) or one and one half (1½) times the average yearly workers' compensation premium for such construction services provider based on the appropriate assigned risk plan advisory prospective loss cost and multiplier minus the premium dollars paid on the policy that was the object of the understatement or concealment.*

*(b) This section shall have no effect upon a construction services provider's or carrier's duty to provide benefits under this chapter or upon any of the construction services provider's or carrier's rights and defenses under this chapter, including, but not limited to, § 50-6-108.*

*(c) In addition to the penalties provided for in subdivision (a)(2), the department shall refer cases involving business operations that are in violation of this section to the Tennessee bureau of investigation or the appropriate district attorney general for any action deemed necessary under any applicable*

*criminal law.*

*(d) An individual or entity that is not a successor-in-interest or a principal of a construction services provider who is in violation of this section shall not be liable for the monetary penalties in this section.*

*(e) The funds collected by the administrator or the administrator's designee for penalties assessed pursuant to subdivision (a)(2) shall be deposited in the employee misclassification education and enforcement fund established by § 50-6-913 to be administered by the administrator.*

**50-6-415. Data collection — Reporting data. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a)(1) The commissioner of labor and workforce development has the same authority as the commissioner of commerce and insurance to request and obtain relevant information on workers' compensation claims. All workers' compensation insurers or their designated agents, self insurers and the department of commerce and insurance shall report claims information and other relevant workers' compensation data necessary to determine and analyze costs of the system to the commissioner of labor and workforce development or to the agents as the commissioner may designate. The commissioner may promulgate all reasonable rules and regulations necessary to implement this section in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(2) In promulgating rules concerning data collection, the commissioner of labor and workforce development shall include appropriate elements of the Detailed Claim Information Reporting Model Regulation for Workers' Compensation Insurance issued by the National Association of Insurance Commissioners, and other information the commissioner deems necessary. The commissioner shall also consult with the advisory council on workers' compensation in defining the information needed to permit management of the system. The commissioner shall also report to the commerce and labor committee of the senate, and the consumer and human resources committee of the house of representatives at the request of the chairs of the committees.

(b) The division of workers' compensation shall gather, and has the duty to analyze and report, information relevant to the functioning of the workers' compensation system to the advisory council on workers' compensation, the general assembly and the governor. The division shall respond to information requests concerning workers' compensation issues from the advisory council on workers' compensation, the general assembly and the governor.

(c) The commissioner of labor and workforce development shall enforce requests pursuant to this section in the same manner and with the same authority as the commissioner of commerce and insurance possesses with respect to violations of this part and title 56. The commissioner shall also notify the principal corporate office of any insurer of any refusal to comply with such requests. The commissioner's enforcement authority under this subsection (c) applies only to the commissioner's efforts to obtain relevant data as provided in subsections (a) and (b).

**50-6-415. Data collection — Reporting data. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a)(1) The administrator of the division of workers' compensation has the same authority as the commissioner of commerce and insurance to request*

*and obtain relevant information on workers' compensation claims. All workers' compensation insurers or their designated agents, self insurers and the department of commerce and insurance shall report claims information and other relevant workers' compensation data necessary to determine and analyze costs of the system to the administrator of the division of workers' compensation or to the agents as the administrator may designate. The administrator may promulgate all reasonable rules and regulations necessary to implement this section in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.*

*(2) In promulgating rules concerning data collection, the administrator of the division of workers' compensation shall include appropriate elements of the Detailed Claim Information Reporting Model Regulation for Workers' Compensation Insurance issued by the National Association of Insurance Commissioners, and other information the administrator deems necessary. The administrator shall also consult with the advisory council on workers' compensation in defining the information needed to permit management of the system. The administrator shall also report to the commerce and labor committee of the senate, and the consumer and human resources committee of the house of representatives at the request of the chairs of the committees.*

*(b) The division of workers' compensation shall gather, and has the duty to analyze and report, information relevant to the functioning of the workers' compensation system to the advisory council on workers' compensation, the general assembly and the governor. The division shall respond to information requests concerning workers' compensation issues from the advisory council on workers' compensation, the general assembly and the governor.*

*(c) The administrator of the workers' compensation division shall enforce requests pursuant to this section in the same manner and with the same authority as the commissioner of commerce and insurance possesses with respect to violations of this part and title 56. The administrator shall also notify the principal corporate office of any insurer of any refusal to comply with such requests. The administrator's enforcement authority under this subsection (c) applies only to the administrator's efforts to obtain relevant data as provided in subsections (a) and (b).*

**50-6-418. Rating plans based on drug-free workplace program participation. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

*(a)(1) The department of commerce and insurance shall approve rating plans for workers' compensation insurance that give specific identifiable consideration in the setting of rates to employers that implement a drug-free workplace program pursuant to rules adopted by the division of workers' compensation of the department of labor and workforce development. The plans must take effect January 1, 1997, must be actuarially sound, and must state the savings anticipated to result from the drug testing. The credit shall be at least five percent (5%) unless the commissioner of commerce and insurance determines that five percent (5%) is actuarially unsound.*

*(2) The commissioner is also authorized to develop a schedule of premium credits for workers' compensation insurance for employers who have safety programs that attain certain criteria for safety programs. The commissioner shall consult with the commissioner of labor and workforce development in*

setting the criteria.

(b) The department of commerce and insurance shall apply the drug-free workplace program credit separately to each individual company for an employer having more than one (1) company under one (1) workers' compensation insurance policy. However, no credit given to an individual company may be combined with any credit given to any other company of the common employer or to the common employer itself.

**50-6-418. Rating plans based on drug-free workplace program participation. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a)(1) The department of commerce and insurance shall approve rating plans for workers' compensation insurance that give specific identifiable consideration in the setting of rates to employers that implement a drug-free workplace program pursuant to rules adopted by the division of workers' compensation of the department of labor and workforce development. The plans must take effect January 1, 1997, must be actuarially sound, and must state the savings anticipated to result from the drug testing. The credit shall be at least five percent (5%) unless the commissioner of commerce and insurance determines that five percent (5%) is actuarially unsound.*

*(2) The commissioner is also authorized to develop a schedule of premium credits for workers' compensation insurance for employers who have safety programs that attain certain criteria for safety programs. The commissioner shall consult with the administrator of the division of workers' compensation in setting the criteria.*

*(b) The department of commerce and insurance shall apply the drug-free workplace program credit separately to each individual company for an employer having more than one (1) company under one (1) workers' compensation insurance policy. However, no credit given to an individual company may be combined with any credit given to any other company of the common employer or to the common employer itself.*

**50-6-419. Rules governing settlement of workers' compensation claims. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) Notwithstanding any other provision of this part or of title 56 to the contrary, in order to assure that injured employees are treated fairly and to assure that claims are handled in an appropriate and uniform manner, the commissioner of labor and workforce development shall set standards by rule governing the adjustment and settlement of workers' compensation claims by insurance carriers and self-insured employers. The standards may include, but are not limited to, standards governing contact with an employee after notice of injury has been given, the processing of claims and procedures for making an offer of settlement.

(b) The commissioner shall promulgate rules and regulations to effectuate the purposes of this section. The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) The commissioner of labor and workforce development shall enforce standards adopted pursuant to this section in the same manner and with the

same authority as the commissioner of commerce and insurance possesses with respect to violations of this part and title 56. The commissioner shall also notify the principal corporate office of any insurer of any violations of the standards.

**50-6-419. Rules governing settlement of workers' compensation claims. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) Notwithstanding any other provision of this part or of title 56 to the contrary, in order to assure that injured employees are treated fairly and to assure that claims are handled in an appropriate and uniform manner; the administrator of the division of workers' compensation shall set standards by rule governing the adjustment and settlement of workers' compensation claims by insurance carriers and self-insured employers. The standards may include, but are not limited to, standards governing contact with an employee after notice of injury has been given, the processing of claims and procedures for making an offer of settlement.*

*(b) The administrator shall promulgate rules and regulations to effectuate the purposes of this section. The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.*

*(c) The administrator of the division of workers' compensation shall enforce standards adopted pursuant to this section in the same manner and with the same authority as the commissioner of commerce and insurance possesses with respect to violations of this part and title 56. The administrator shall also notify the principal corporate office of any insurer of any violations of the standards.*

**50-6-421. Requesting and obtaining information on employer workers' compensation insurance policies to ensure compliance with law — Confidentiality — What constitutes public record. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) The commissioner of labor and workforce development may request and obtain information regarding employer workers' compensation insurance policies in order to ensure compliance with the law. Except as otherwise provided in subsection (b), any information relating to workers' compensation insurance policies obtained by the commissioner pursuant to this subsection (a) shall be deemed confidential and shall not constitute a public record, as defined in § 10-7-503; provided, such information may be used by any state agency, or vendor designated by the state, for the purpose of ensuring compliance with the law.

(b) The following information obtained by the commissioner pursuant to subsection (a) shall constitute a public record, as defined in § 10-7-503, and shall be open for personal inspection by any citizen of this state:

- (1) Employer name and business address;
  - (2) Workers' compensation insurance carrier name and business address;
- and
- (3) Workers' compensation insurance policy number, policy effective date and policy expiration date.

**50-6-421. Requesting and obtaining information on employer workers' compensation insurance policies to ensure compliance with law — Confidentiality — What constitutes public record. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) The administrator of the division of workers' compensation may request and obtain information regarding employer workers' compensation insurance policies in order to ensure compliance with the law. Except as otherwise provided in subsection (b), any information relating to workers' compensation insurance policies obtained by the administrator pursuant to this subsection (a) shall be deemed confidential and shall not constitute a public record, as defined in § 10-7-503; provided, such information may be used by any state agency, or vendor designated by the state, for the purpose of ensuring compliance with the law.*

*(b) The following information obtained by the administrator pursuant to subsection (a) shall constitute a public record, as defined in § 10-7-503, and shall be open for personal inspection by any citizen of this state:*

- (1) Employer name and business address;*
- (2) Workers' compensation insurance carrier name and business address;*
- and*
- (3) Workers' compensation insurance policy number, policy effective date and policy expiration date. History.*

**50-6-501. Establishment of safety committees — Reporting by insurance companies — Civil penalty. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

*(a) In order to promote health and safety in places of employment in this state, every public or private employer that is subject to this chapter, shall establish and administer a safety committee in accordance with rules adopted pursuant to § 50-6-502, if the commissioner of labor and workforce development finds that the employer has an experience modification factor or rate applied to the premium greater than or equal to one and twenty hundredths (1.20).*

*(b) In making determinations under subsection (a), the commissioner of labor and workforce development shall utilize the most recent statistics regarding experience modification rates.*

*(c)(1) Every insurance company authorized to write workers' compensation insurance shall submit its modification factors or rates for each of its workers' compensation insureds to the commissioner of commerce and insurance, when requested by the commissioner. On request from the commissioner of labor and workforce development, the commissioner of commerce and insurance shall provide the department of labor and workforce development with the information.*

*(2) The commissioner of labor and workforce development shall establish safety committee requirements for self-insured employers pursuant to rules promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.*

*(3) The commissioner of commerce and insurance may assess a civil penalty of up to two thousand dollars (\$2,000) per incident for failure to comply with subdivision (c)(1).*

**50-6-501. Establishment of safety committees — Reporting by insurance companies — Civil penalty. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) In order to promote health and safety in places of employment in this state, every public or private employer that is subject to this chapter, shall establish and administer a safety committee in accordance with rules adopted pursuant to § 50-6-502, if the administrator of the workers' compensation division finds that the employer has an experience modification factor or rate applied to the premium greater than or equal to one and twenty hundredths (1.20).*

*(b) In making determinations under subsection (a), the administrator of the workers' compensation division shall utilize the most recent statistics regarding experience modification rates.*

*(c)(1) Every insurance company authorized to write workers' compensation insurance shall submit its modification factors or rates for each of its workers' compensation insureds to the commissioner of commerce and insurance, when requested by the commissioner. On request from the administrator of the workers' compensation division, the commissioner of commerce and insurance shall provide the division of workers' compensation with the information.*

*(2) The administrator of the workers' compensation division shall establish safety committee requirements for self-insured employers pursuant to rules promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.*

*(3) The commissioner of commerce and insurance may assess a civil penalty of up to two thousand dollars (\$2,000) per incident for failure to comply with subdivision (c)(1).*

**50-6-502. Rules governing committees — Duties of committees — Training — Operation under collective bargaining agreement. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

*(a) In carrying out § 50-6-501, the commissioner of labor and workforce development shall promulgate rules that include, but are not limited to, provisions:*

*(1) Prescribing the membership of the committees to ensure equal numbers of hourly employees and employer representatives as well as specifying the frequency of meetings;*

*(2) Requiring employers to make adequate written records of each meeting and to maintain the records subject to inspection by Tennessee occupational safety and health administration representatives; and*

*(3) Requiring employers to compensate employee representatives on safety committees at the regular hourly wage while the employees are engaged in safety committee training or are attending safety committee meetings.*

*(b) The duties and functions of the safety committee shall include, but are not limited to:*

*(1) Assisting in establishing procedures for workplace safety inspections by the committee;*

*(2) Assisting in establishing procedures for investigating all safety inci-*

dents, accidents, illnesses and deaths; and

(3) Assisting in evaluating accident and illness prevention programs.

(c) The employer shall provide training for safety committee members in their duties and responsibilities provided in subsection (b).

(d) An employer operating under a collective bargaining agreement that contains provisions regulating the formation and operation of a safety committee that meets or exceeds the minimum requirements of this section and § 50-6-501 may apply to the commissioner of labor and workforce development for a determination that the employer meets the requirements of this section and § 50-6-501.

**50-6-502. Rules governing committees — Duties of committees — Training — Operation under collective bargaining agreement. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) In carrying out § 50-6-501, the administrator of the workers' compensation division shall promulgate rules that include, but are not limited to, provisions:*

*(1) Prescribing the membership of the committees to ensure equal numbers of hourly employees and employer representatives as well as specifying the frequency of meetings;*

*(2) Requiring employers to make adequate written records of each meeting and to maintain the records subject to inspection by Tennessee occupational safety and health administration representatives; and*

*(3) Requiring employers to compensate employee representatives on safety committees at the regular hourly wage while the employees are engaged in safety committee training or are attending safety committee meetings.*

*(b) The duties and functions of the safety committee shall include, but are not limited to:*

*(1) Assisting in establishing procedures for workplace safety inspections by the committee;*

*(2) Assisting in establishing procedures for investigating all safety incidents, accidents, illnesses and deaths; and*

*(3) Assisting in evaluating accident and illness prevention programs.*

*(c) The employer shall provide training for safety committee members in their duties and responsibilities provided in subsection (b).*

*(d) An employer operating under a collective bargaining agreement that contains provisions regulating the formation and operation of a safety committee that meets or exceeds the minimum requirements of this section and § 50-6-501 may apply to the administrator of the workers' compensation division for a determination that the employer meets the requirements of this section and § 50-6-501.*

**50-6-609. Scope of insurance by fund. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

The fund shall insure an employer against any workers' compensation claim arising out of and in the course of employment as fully as any other insurer.

**50-6-609. Scope of insurance by fund. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*The fund shall insure an employer against any workers' compensation claim arising primarily out of and in the course and scope of employment as fully as any other insurer.*

**50-6-623. Submission and review of organizational and operating plans. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

Before the fund established by this part shall enter into any contract, except for consulting services, or issue any bonds, or incur any liability, the board of directors shall submit organizational and operating plans for the fund to a review committee for approval. The review committee shall consist of the commissioners of labor and workforce development, commerce and insurance, and finance and administration, the state treasurer, and the comptroller of the treasury. The review committee shall approve the operational and organizational plans if it determines the plans to be in accord with this part and to be fiscally sound and responsible. If the committee approves the plan, then the fund may become fully operational. If the committee does not approve the plan, then the committee shall make appropriate recommendations to the board of directors, governor, and the speakers of the senate and house of representatives concerning any deficiencies.

**50-6-623. Submission and review of organizational and operating plans. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*Before the fund established by this part shall enter into any contract, except for consulting services, or issue any bonds, or incur any liability, the board of directors shall submit organizational and operating plans for the fund to a review committee for approval. The review committee shall consist of the administrator of the workers' compensation division, the commissioners of commerce and insurance, and finance and administration, the state treasurer, and the comptroller of the treasury. The review committee shall approve the operational and organizational plans if it determines the plans to be in accord with this part and to be fiscally sound and responsible. If the committee approves the plan, then the fund may become fully operational. If the committee does not approve the plan, then the committee shall make appropriate recommendations to the board of directors, governor, and the speakers of the senate and house of representatives concerning any deficiencies.*

**50-6-902. Requirement that construction services providers carry workers' compensation insurance — Exemptions — Election by subcontractor. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) Except as provided in subsection (b), all construction services providers shall be required to carry workers' compensation insurance on themselves. The requirement set out in this subsection (a) shall apply whether or not the provider employs fewer than five (5) employees.

(b) To the extent there is no restriction on applying for an exemption pursuant to § 50-6-903, a construction services provider shall be exempt from

subsection (a) if the provider:

(1) Is a construction services provider rendering services on a construction project that is not a commercial construction project and is listed on the registry;

(2) Is a construction services provider rendering services on a commercial construction project, is listed on the registry and such provider is rendering services to a person or entity that complies with § 50-6-914(b)(2);

(3) Is covered under a policy of workers' compensation insurance maintained by the person or entity for whom the provider is providing services;

(4) Is a construction services provider performing work directly for the owner of the property; provided, however, that this subdivision (b)(4) shall not apply to a construction services provider who acts as a general or intermediate contractor and who subsequently subcontracts any of the work contracted to be performed on behalf of the owner;

(5) Is a construction services provider building a dwelling or other structure, or performing maintenance, repairs, or making additions to structures, on the construction service provider's own property; or

(6) Is a provider whose employment at the time of injury is casual as provided in § 50-6-106.

(c) A subcontractor engaged in the construction industry under contract to a general contractor engaged in the construction industry may elect to be covered under any policy of workers' compensation insurance insuring the general contractor upon written agreement of the general contractor, regardless of whether such subcontractor is on the registry established pursuant to this part, by filing written notice of the election, on a form prescribed by the commissioner of labor and workforce development, with the department. It is the responsibility of the general contractor to file the written notice with the department. Failure of the general contractor to file the written notice shall not operate to relieve or alter the obligation of an insurance company to provide coverage to a subcontractor when the subcontractor can produce evidence of payment of premiums to the insurance company for the coverage. The election shall in no way terminate or affect the independent contractor status of the subcontractor for any other purpose than to permit workers' compensation coverage. The election of coverage may be terminated by the subcontractor or general contractor by providing written notice of the termination to the department and to all other parties consenting to the prior election. The termination shall be effective thirty (30) days from the date of the notice to all other parties consenting to the prior election and to the department.

(d) Nothing in this part shall be construed as exempting or preventing a construction services provider from carrying workers' compensation insurance for any of its employees. The requirement set out in this subsection (d) shall apply whether or not the provider employs fewer than five (5) employees.

**50-6-902. Requirement that construction services providers carry workers' compensation insurance — Exemptions — Election by subcontractor. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) Except as provided in subsection (b), all construction services providers shall be required to carry workers' compensation insurance on themselves. The requirement set out in this subsection (a) shall apply whether or not the*

*provider employs fewer than five (5) employees.*

*(b) To the extent there is no restriction on applying for an exemption pursuant to § 50-6-903, a construction services provider shall be exempt from subsection (a) if the provider:*

*(1) Is a construction services provider rendering services on a construction project that is not a commercial construction project and is listed on the registry;*

*(2) Is a construction services provider rendering services on a commercial construction project, is listed on the registry and such provider is rendering services to a person or entity that complies with § 50-6-914(b)(2);*

*(3) Is covered under a policy of workers' compensation insurance maintained by the person or entity for whom the provider is providing services;*

*(4) Is a construction services provider performing work directly for the owner of the property; provided, however, that this subdivision (b)(4) shall not apply to a construction services provider who acts as a general or intermediate contractor and who subsequently subcontracts any of the work contracted to be performed on behalf of the owner;*

*(5) Is a construction services provider building a dwelling or other structure, or performing maintenance, repairs, or making additions to structures, on the construction service provider's own property; or*

*(6) Is a provider whose employment at the time of injury is casual as provided in § 50-6-106.*

*(c) A subcontractor engaged in the construction industry under contract to a general contractor engaged in the construction industry may elect to be covered under any policy of workers' compensation insurance insuring the general contractor upon written agreement of the general contractor, regardless of whether such subcontractor is on the registry established pursuant to this part, by filing written notice of the election, on a form prescribed by the administrator of the workers' compensation division, with the division. It is the responsibility of the general contractor to file the written notice with the department. Failure of the general contractor to file the written notice shall not operate to relieve or alter the obligation of an insurance company to provide coverage to a subcontractor when the subcontractor can produce evidence of payment of premiums to the insurance company for the coverage. The election shall in no way terminate or affect the independent contractor status of the subcontractor for any other purpose than to permit workers' compensation coverage. The election of coverage may be terminated by the subcontractor or general contractor by providing written notice of the termination to the department and to all other parties consenting to the prior election. The termination shall be effective thirty (30) days from the date of the notice to all other parties consenting to the prior election and to the department.*

*(d) Nothing in this part shall be construed as exempting or preventing a construction services provider from carrying workers' compensation insurance for any of its employees. The requirement set out in this subsection (d) shall apply whether or not the provider employs fewer than five (5) employees.*

**50-6-903. Criteria for applying for exemption. [Effective until January 1, 2014. See the version effective on January 1, 2014.]**

*(a) Any construction services provider who meets one (1) of the following criteria may apply for an exemption from § 50-6-902(a):*

(1) An officer of a corporation who is engaged in the construction industry; provided, that no more than five (5) officers of one (1) corporation shall be eligible for an exemption;

(2) A member of a limited liability company who is engaged in the construction industry if such member owns at least twenty percent (20%) of such company;

(3) A partner in a limited partnership, limited liability partnership or a general partnership who is engaged in the construction industry if such partner owns at least twenty percent (20%) of such partnership;

(4) A sole proprietor engaged in the construction industry; or

(5) An owner of any business entity listed in subdivisions (a)(1)-(3) that is family-owned; provided, that no more than five (5) owners of one (1) family-owned business may be exempt from § 50-6-902(a).

(b) A construction services provider may be eligible for and may utilize multiple exemptions if the construction services provider meets the requirements set out in subsection (a) for each such exemption and complies with § 50-6-904 for each such exemption in which the construction services provider seeks to obtain; provided, however, that a construction services provider applying for a second or subsequent exemption shall not be required to pay the fees set out in § 50-6-912(a)(1) and (2), but shall instead pay the fee set out in § 50-6-912(a)(9) for each subsequent workers' compensation exemption registration and shall pay the fee set out in § 50-6-912(a)(10) for each subsequent registration renewal.

**50-6-903. Criteria for applying for exemption. [Effective on January 1, 2014. See the version effective until January 1, 2014.]**

*(a) Any construction services provider who meets one (1) of the following criteria may apply for an exemption from § 50-6-902(a):*

*(1) An officer of a corporation who is engaged in the construction industry; provided, that no more than five (5) officers of one (1) corporation shall be eligible for an exemption;*

*(2) A member of a limited liability company who is engaged in the construction industry if such member owns at least twenty percent (20%) of such company;*

*(3) A partner in a limited partnership, limited liability partnership or a general partnership who is engaged in the construction industry if such partner owns at least twenty percent (20%) of such partnership;*

*(4) A sole proprietor engaged in the construction industry; or*

*(5) An owner of any business entity listed in subdivisions (a)(1)-(3) that is family-owned; provided, that no more than five (5) owners of one (1) family-owned business may be exempt from § 50-6-902(a).*

*(b) A construction services provider may be eligible for and may utilize multiple exemptions if the construction services provider meets the requirements set out in subsection (a) for each such exemption and complies with § 50-6-904 for each such exemption in which the construction services provider seeks to obtain; provided, however, that a construction services provider applying for a second or subsequent exemption shall not be required to pay the fees set out in § 50-6-912(a)(1) and (2), but shall instead pay the fee set out in § 50-6-912(a)(9) for each subsequent workers' compensation exemption registration and shall pay the fee set out in § 50-6-912(a)(10) for each subsequent*

*registration renewal.*

*(c)(1) A construction services provider who is an individual and who does not meet the criteria established in subsection (a), but who is a member of a recognized religious sect or division and is an adherent of established tenets or teachers of such sect or division by reason of which such construction services provider is conscientiously opposed to acceptance of the benefits provided by this chapter may apply for an exemption from § 50-6-902(a); provided, however, that no more than five (5) individuals associated with one business entity may be exempt from § 50-6-902(a).*

*(2) Any applicant applying for an exemption from § 50-6-902(a) pursuant to subdivision (c)(1) shall provide an affidavit from the leader of the recognized religious sect or division stating that the individual filing the application for an exemption is a member of the recognized religious sect or division and is exempt, as evidenced by the Internal Revenue Service Form 4029, or similar form used by the internal revenue service. The leader of the recognized religious sect or division shall notify the secretary of state and department, in writing, if the member of the recognized religious sect or division who obtains an exemption from § 50-6-902(a) leaves or withdraws membership from the recognized religious sect or division.*

*(3) Each individual employee of a construction services provider who meets the religious exemption requirements pursuant to this subsection (c) shall pay the fees set out in § 50-6-912(a)(1) and (a)(2). Any collected fees shall be deposited into the employee misclassification education and enforcement fund, pursuant to § 50-6-913.*

**50-6-904. Application for construction services provider registration.  
[Effective until January 1, 2014. See the version effective  
on January 1, 2014.]**

(a)(1)(A) Any construction services provider applying for an exemption from § 50-6-902(a) who has not been issued a license by the board shall obtain a construction services provider registration from the secretary of state at the same time such provider applies for such exemption.

(B) The secretary of state is authorized and directed to issue the construction services provider registration on behalf of the board. The secretary of state shall issue an identification number assigned to the provider's registration. The board shall obtain such identification number and other identifying information from the secretary of state.

(2) Any construction services provider requesting exemption from § 50-6-902(a) shall submit an application along with the required filing fees to the secretary of state. The applicant shall provide sufficient documentation for the secretary of state to assure that such applicant meets the requirements set out in § 50-6-902, including, but not limited to:

(A) The applicant's full legal name;

(B) The applicant's birth month;

(C) The applicant's physical address; provided, that the applicant may provide a post office box number for purposes of receiving mail from the secretary of state, as long as the applicant also provides a physical address for the business entity for which the applicant is an officer, member, partner or owner;

(D) A telephone number through which the applicant can be reached;

(E) The name of the business entity through which the applicant is seeking the workers' compensation exemption;

(F) The federal employer identification number issued to the applicant if a sole proprietor or a business entity for which the applicant is an officer, member, partner or owner seeking exemption pursuant to § 50-6-903, and the last four (4) digits of the applicant's social security number;

(G) The contractor license number issued by the board to such applicant or the construction services provider registration number issued by the secretary of state to such applicant;

(H) A current license issued by a local government pursuant to § 67-4-723, if the business entity through which the applicant is seeking the workers' compensation exemption is required by law to obtain such license; and

(I) Any other information the secretary of state deems necessary to identify such applicant.

(3) The secretary of state shall verify that the applicant meets the qualifications set out in § 50-6-902 upon a review of its records and the records provided by such applicant.

(b) The application shall be on a form designed by the secretary of state and shall contain a statement that specifies the eligibility requirements for exemption, contain an attestation that the applicant meets the eligibility requirements and contain a statement that a false statement on such application is subject to the penalties of perjury set out in § 39-16-702.

(c) The application, as well as a process for submission of such application, shall be available through the secretary of state's web site or by contacting the secretary of state's office in person or by mail.

**50-6-904. Application for construction services provider registration.**  
**[Effective on January 1, 2014. See the version effective until January 1, 2014.]**

*(a)(1)(A) Any construction services provider applying for an exemption from § 50-6-902(a) who has not been issued a license by the board shall obtain a construction services provider registration from the secretary of state at the same time such provider applies for such exemption.*

*(B) The secretary of state is authorized and directed to issue the construction services provider registration on behalf of the board. The secretary of state shall issue an identification number assigned to the provider's registration. The board shall obtain such identification number and other identifying information from the secretary of state.*

*(2) Any construction services provider requesting exemption from § 50-6-902(a) shall submit an application along with the required filing fees to the secretary of state. The applicant shall provide sufficient documentation for the secretary of state to assure that such applicant meets the requirements set out in § 50-6-902, including, but not limited to:*

*(A) The applicant's full legal name;*

*(B) The applicant's birth month;*

*(C) The applicant's physical address; provided, that the applicant may provide a post office box number for purposes of receiving mail from the secretary of state, as long as the applicant also provides a physical address for the business entity for which the applicant is an officer, member, partner*

*or owner;*

*(D) A telephone number through which the applicant can be reached;*

*(E) The name of the business entity through which the applicant is seeking the workers' compensation exemption;*

*(F) The federal employer identification number issued to the applicant if a sole proprietor or a business entity for which the applicant is an officer, member, partner or owner seeking exemption pursuant to § 50-6-903, and the last four (4) digits of the applicant's social security number; provided, however, that if an applicant seeks an exemption pursuant to § 50-6-903(c), the applicant may provide the last four (4) digits of a control number issued to the applicant by the social security administration instead of the last four (4) digits of the applicant's social security number;*

*(G) The contractor license number issued by the board to such applicant or the construction services provider registration number issued by the secretary of state to such applicant;*

*(H) A current license issued by a local government pursuant to § 67-4-723, if the business entity through which the applicant is seeking the workers' compensation exemption is required by law to obtain such license;*

*(I) Any other information the secretary of state deems necessary to identify such applicant; and*

*(J) If the construction services provider is applying for an exemption pursuant to the criteria set out in § 50-6-903(c), the provider shall submit a copy of an approved Internal Revenue Service Form 4029 or similar form used by the internal revenue service, to show that an application for exemption from social security and medicare taxes and waiver of benefits has been approved for such provider applying for an exemption pursuant to this part.*

*(3) The secretary of state shall verify that the applicant meets the qualifications set out in § 50-6-902 upon a review of its records and the records provided by such applicant.*

*(b) The application shall be on a form designed by the secretary of state and shall contain a statement that specifies the eligibility requirements for exemption, contain an attestation that the applicant meets the eligibility requirements and contain a statement that a false statement on such application is subject to the penalties of perjury set out in § 39-16-702.*

*(c) The application, as well as a process for submission of such application, shall be available through the secretary of state's web site or by contacting the secretary of state's office in person or by mail.*

**50-6-913. Creation of employee misclassification education and enforcement fund — Costs of administration. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) There is created a fund to be known as the "employee misclassification education and enforcement fund." Any fee collected pursuant to § 50-6-912(a) shall be deposited in the employee misclassification education and enforcement fund. Moneys in the fund shall be invested by the state treasurer in accordance with the provisions of § 9-4-603. The fund shall be administered by the commissioner of labor and workforce development.

(b) All costs of the secretary of state associated with the administration of this part shall be paid by the commissioner of labor and workforce development

from the employee misclassification education and enforcement fund. Moneys remaining in the fund after such payment may be expended, subject to appropriation by the general assembly, at the direction of the commissioner of labor and workforce development for the purchase of computer software and hardware designed to identify potential employee misclassification activity, for the hiring of additional employees to investigate potential employee misclassification activity, for education of employers and employees regarding the requirements of this part and in support of the ongoing investigation and prosecution of employee misclassification.

(c) Any amount in the employee misclassification education and enforcement fund at the end of any fiscal year shall not revert to the general fund, but shall remain available for the purposes set forth in subsection (b). Interest accruing on investments and deposits of the employee misclassification education and enforcement fund shall be credited to such account, shall not revert to the general fund, and shall be carried forward into each subsequent fiscal year.

**50-6-913. Creation of employee misclassification education and enforcement fund — Costs of administration. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) There is created a fund to be known as the “employee misclassification education and enforcement fund.” Any fee collected pursuant to § 50-6-912(a) shall be deposited in the employee misclassification education and enforcement fund. Moneys in the fund shall be invested by the state treasurer in accordance with the provisions of § 9-4-603. The fund shall be administered by the administrator of the workers’ compensation division.*

*(b) All costs of the secretary of state associated with the administration of this part shall be paid by the administrator of the workers’ compensation division from the employee misclassification education and enforcement fund. Moneys remaining in the fund after such payment may be expended, subject to appropriation by the general assembly, at the direction of the administrator of the workers’ compensation division for the purchase of computer software and hardware designed to identify potential employee misclassification activity, for the hiring of additional employees to investigate potential employee misclassification activity, for education of employers and employees regarding the requirements of this part and in support of the ongoing investigation and prosecution of employee misclassification.*

*(c) Any amount in the employee misclassification education and enforcement fund at the end of any fiscal year shall not revert to the general fund, but shall remain available for the purposes set forth in subsection (b). Interest accruing on investments and deposits of the employee misclassification education and enforcement fund shall be credited to such account, shall not revert to the general fund, and shall be carried forward into each subsequent fiscal year.*

**50-6-919. Employee misclassification advisory task force. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) There is created the employee misclassification advisory task force to study and make recommendations regarding issues relative to employee misclassification in the construction industry.

(b) The task force shall study issues relative to employee misclassification in

the construction industry, including, but not limited to:

(1) The impact of employee misclassification on state and local governments of this state and the amount of state revenue, if any, that is lost or not collected due to employee misclassification;

(2) The lost earnings of the insurance industry due to employee misclassification;

(3) The estimates of the frequency of occurrence and economic impact of employee misclassification and whether particular industries are more likely to engage in the misclassification of employees;

(4) Whether state law should specify a uniform definition of the employment relationship and, if so, how it should be defined;

(5) Whether existing Tennessee laws aimed at preventing, investigating and taking enforcement action against the failure of employers to properly classify individuals as employees are effective;

(6) Whether there are ways to facilitate the sharing of information among agencies represented by task force members relative to violations of laws by employers who fail to classify individuals as employees;

(7) Whether there are new ways to pool, focus and target investigative and enforcement resources relative to employee misclassification;

(8) New strategies for systematically investigating the failure of employers to properly classify individuals as employees;

(9) Whether improvements are needed to facilitate the filing of complaints and identify potential violators, including, but not limited to, soliciting referrals and other relevant information from the public;

(10) Changes in the law, if any, that need to be made in order to ensure that agencies represented by task force members investigating the failure of employers to properly classify individuals as employees under their own statutory or administrative enforcement mechanism have the authority to refer a matter to other participating agencies for assessment of potential liability under the other agencies' relevant statutory or administrative enforcement mechanisms;

(11) Innovative ways to prevent misclassification of employees by employers, such as through disseminating educational materials regarding the legal differences between independent contractors and employees;

(12) Methods by which public awareness of the illegal nature and harms inflicted by the failure of employers to properly classify individuals as employees can be increased; and

(13) Any other issues relative to employee misclassification in the construction industry.

(c) The task force shall seek public input and may conduct public hearings or appoint study groups as necessary to obtain information necessary to conduct its study.

(d) Membership on the task force shall be as follows:

(1) The commissioner of labor and workforce development or the commissioner's designee;

(2) The commissioner of commerce and insurance or the commissioner's designee; and

(3) The executive director of the board for licensing contractors or the director's designee.

(e) The secretary of state or the secretary of state's designee, the attorney general and reporter or the attorney general's designee, the chairman of the

advisory council on workers' compensation or the chairman's designee, the executive director of the district attorneys general conference or the director's designee, and the director of the Tennessee bureau of investigation or the director's designee shall all serve as ex officio nonvoting members of the task force. The task force may appoint additional ex officio nonvoting members as it deems appropriate.

(f) The commissioner of labor and workforce development shall convene the first meeting of the task force on or after February 1, 2011, at which meeting the task force shall elect its officers from the voting members and otherwise organize itself as it deems appropriate.

(g) On or before February 1, 2012, and on or before February 1 annually thereafter, the task force shall submit a report on its findings and progress to the commerce and labor committee of the senate, and the consumer and human resources committee of the house of representatives.

(h) To the extent permitted by law, every agency, department, office, division or public authority of this state shall cooperate with the task force and furnish such information that the task force determines is reasonably necessary to accomplish its purposes.

(i) In accordance with procedures set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 2, the department of labor and workforce development, the department of commerce and insurance, and the board for licensing contractors may individually implement recommendations of the task force; provided, that such implementation is authorized under the existing statutory authority of the respective departments or board.

**50-6-919. Employee misclassification advisory task force. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) There is created the employee misclassification advisory task force to study and make recommendations regarding issues relative to employee misclassification in the construction industry.*

*(b) The task force shall study issues relative to employee misclassification in the construction industry, including, but not limited to:*

*(1) The impact of employee misclassification on state and local governments of this state and the amount of state revenue, if any, that is lost or not collected due to employee misclassification;*

*(2) The lost earnings of the insurance industry due to employee misclassification;*

*(3) The estimates of the frequency of occurrence and economic impact of employee misclassification and whether particular industries are more likely to engage in the misclassification of employees;*

*(4) Whether state law should specify a uniform definition of the employment relationship and, if so, how it should be defined;*

*(5) Whether existing Tennessee laws aimed at preventing, investigating and taking enforcement action against the failure of employers to properly classify individuals as employees are effective;*

*(6) Whether there are ways to facilitate the sharing of information among agencies represented by task force members relative to violations of laws by employers who fail to classify individuals as employees;*

*(7) Whether there are new ways to pool, focus and target investigative and enforcement resources relative to employee misclassification;*

*(8) New strategies for systematically investigating the failure of employers to properly classify individuals as employees;*

*(9) Whether improvements are needed to facilitate the filing of complaints and identify potential violators, including, but not limited to, soliciting referrals and other relevant information from the public;*

*(10) Changes in the law, if any, that need to be made in order to ensure that agencies represented by task force members investigating the failure of employers to properly classify individuals as employees under their own statutory or administrative enforcement mechanism have the authority to refer a matter to other participating agencies for assessment of potential liability under the other agencies' relevant statutory or administrative enforcement mechanisms;*

*(11) Innovative ways to prevent misclassification of employees by employers, such as through disseminating educational materials regarding the legal differences between independent contractors and employees;*

*(12) Methods by which public awareness of the illegal nature and harms inflicted by the failure of employers to properly classify individuals as employees can be increased; and*

*(13) Any other issues relative to employee misclassification in the construction industry.*

*(c) The task force shall seek public input and may conduct public hearings or appoint study groups as necessary to obtain information necessary to conduct its study.*

*(d) Membership on the task force shall be as follows:*

*(1) The administrator of the workers' compensation division or the administrator's designee;*

*(2) The commissioner of commerce and insurance or the commissioner's designee; and*

*(3) The executive director of the board for licensing contractors or the director's designee.*

*(e) The secretary of state or the secretary of state's designee, the attorney general and reporter or the attorney general's designee, the chairman of the advisory council on workers' compensation or the chairman's designee, the executive director of the district attorneys general conference or the director's designee, and the director of the Tennessee bureau of investigation or the director's designee shall all serve as ex officio nonvoting members of the task force. The task force may appoint additional ex officio nonvoting members as it deems appropriate.*

*(f) The commissioner of labor and workforce development shall convene the first meeting of the task force on or after February 1, 2011, at which meeting the task force shall elect its officers from the voting members and otherwise organize itself as it deems appropriate.*

*(g) On or before February 1, 2012, and on or before February 1 annually thereafter, the task force shall submit a report on its findings and progress to the commerce and labor committee of the senate, and the consumer and human resources committee of the house of representatives.*

*(h) To the extent permitted by law, every agency, department, office, division or public authority of this state shall cooperate with the task force and furnish such information that the task force determines is reasonably necessary to accomplish its purposes.*

*(i) In accordance with procedures set forth in the Uniform Administrative*

*Procedures Act, compiled in title 4, chapter 5, part 2, the department of labor and workforce development, the department of commerce and insurance, and the board for licensing contractors may individually implement recommendations of the task force; provided, that such implementation is authorized under the existing statutory authority of the respective departments or board.*

**50-7-218. “Base period” defined.**

“Base period” means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual’s benefit year; provided, that if the first quarter of the last five (5) completed calendar quarters was included in the base period applicable to any individual’s previous benefit year, the individual’s base period shall be the last four (4) completed calendar quarters. For the purposes of establishing a base period in cases involving persons receiving workers’ compensation benefits for temporary total disability, the department shall exclude periods of such disability from the base period and determine the base period from the last four (4) completed quarters of work before any such disability.

**50-7-301. Benefit formula.**

(a) **Payments of Benefits.** Benefits shall be payable from the fund in the manner provided by this section. All benefits shall be paid through employment offices in accordance with regulations the commissioner prescribes. Notwithstanding any other provision of this chapter to the contrary, any amount of unemployment compensation payable to any claimant for any weeks if not an even dollar amount, shall be rounded to the next lower full dollar amount.

(b) **Weekly Benefit Amount.** An individual’s weekly benefit amount shall be the amount appearing in column B in the Benefit Table corresponding to the line on which in column A of the Benefit Table there appears the average total wages for insured work paid to the individual in the two (2) calendar quarters in the individual’s base period in which the total wages are highest. “Total wages for insured work,” as used in this section, is deemed to mean all remuneration paid to an employee in the base period by employers subject to this chapter.

**BENEFIT TABLE**

(Effective for benefit years established on and after July 5, 1992)

COLUMN A		COLUMN B	
Average Wages Paid in Highest Two Quarters of Base Period		Weekly Benefit Amount	
\$ 780.01	through	\$ 806.00	\$30.00
806.01	through	832.00	31.00
832.01	through	858.00	32.00
858.01	through	884.00	33.00
884.01	through	910.00	34.00
910.01	through	936.00	35.00
936.01	through	962.00	36.00
962.01	through	988.00	37.00

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COLUMN A			COLUMN B	
Average Wages Paid in Highest Two Quarters of Base Period			Weekly Benefit Amount	
988.01	through	1,014.00		38.00
1,014.01	through	1,040.00		39.00
1,040.01	through	1,066.00		40.00
1,066.01	through	1,092.00		41.00
1,092.01	through	1,118.00		42.00
1,118.01	through	1,144.00		43.00
1,144.01	through	1,170.00		44.00
1,170.01	through	1,196.00		45.00
1,196.01	through	1,222.00		46.00
1,222.01	through	1,248.00		47.00
1,248.01	through	1,274.00		48.00
1,274.01	through	1,300.00		49.00
1,300.01	through	1,326.00		50.00
1,326.01	through	1,352.00		51.00
1,352.01	through	1,378.00		52.00
1,378.01	through	1,404.00		53.00
1,404.01	through	1,430.00		54.00
1,430.01	through	1,456.00		55.00
1,456.01	through	1,482.00		56.00
1,482.01	through	1,508.00		57.00
1,508.01	through	1,534.00		58.00
1,534.01	through	1,560.00		59.00
1,560.01	through	1,586.00		60.00
1,586.01	through	1,612.00		61.00
1,612.01	through	1,638.00		62.00
1,638.01	through	1,664.00		63.00
1,664.01	through	1,690.00		64.00
1,690.01	through	1,716.00		65.00
1,716.01	through	1,742.00		66.00
1,742.01	through	1,768.00		67.00
1,768.01	through	1,794.00		68.00
1,794.01	through	1,820.00		69.00
1,820.01	through	1,846.00		70.00
1,846.01	through	1,872.00		71.00
1,872.01	through	1,898.00		72.00
1,898.01	through	1,924.00		73.00
1,924.01	through	1,950.00		74.00
1,950.01	through	1,976.00		75.00
1,976.01	through	2,002.00		76.00
2,002.01	through	2,028.00		77.00
2,028.01	through	2,054.00		78.00
2,054.01	through	2,080.00		79.00
2,080.01	through	2,106.00		80.00
2,106.01	through	2,132.00		81.00
2,132.01	through	2,158.00		82.00
2,158.01	through	2,184.00		83.00

COLUMN A			COLUMN B
Average Wages Paid in Highest Two Quarters of Base Period		Weekly Benefit Amount	
2,184.01	through	2,210.00	84.00
2,210.01	through	2,236.00	85.00
2,236.01	through	2,262.00	86.00
2,262.01	through	2,288.00	87.00
2,288.01	through	2,314.00	88.00
2,314.01	through	2,340.00	89.00
2,340.01	through	2,366.00	90.00
2,366.01	through	2,392.00	91.00
2,392.01	through	2,418.00	92.00
2,418.01	through	2,444.00	93.00
2,444.01	through	2,470.00	94.00
2,470.01	through	2,496.00	95.00
2,496.01	through	2,522.00	96.00
2,522.01	through	2,548.00	97.00
2,548.01	through	2,574.00	98.00
2,574.01	through	2,600.00	99.00
2,600.01	through	2,626.00	100.00
2,626.01	through	2,652.00	101.00
2,652.01	through	2,678.00	102.00
2,678.01	through	2,704.00	103.00
2,704.01	through	2,730.00	104.00
2,730.01	through	2,756.00	105.00
2,756.01	through	2,782.00	106.00
2,782.01	through	2,808.00	107.00
2,808.01	through	2,834.00	108.00
2,834.01	through	2,860.00	109.00
2,860.01	through	2,886.00	110.00
2,886.01	through	2,912.00	111.00
2,912.01	through	2,938.00	112.00
2,938.01	through	2,964.00	113.00
2,964.01	through	2,990.00	114.00
2,990.01	through	3,016.00	115.00
3,016.01	through	3,042.00	116.00
3,042.01	through	3,068.00	117.00
3,068.01	through	3,094.00	118.00
3,094.01	through	3,120.00	119.00
3,120.01	through	3,146.00	120.00
3,146.01	through	3,172.00	121.00
3,172.01	through	3,198.00	122.00
3,198.01	through	3,224.00	123.00
3,224.01	through	3,250.00	124.00
3,250.01	through	3,276.00	125.00
3,276.01	through	3,302.00	126.00
3,302.01	through	3,328.00	127.00
3,328.01	through	3,354.00	128.00
3,354.01	through	3,380.00	129.00

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COLUMN A			COLUMN B
Average Wages Paid in Highest Two Quarters of Base Period		Weekly Benefit Amount	
3,380.01	through	3,406.00	130.00
3,406.01	through	3,432.00	131.00
3,432.01	through	3,458.00	132.00
3,458.01	through	3,484.00	133.00
3,484.01	through	3,510.00	134.00
3,510.01	through	3,536.00	135.00
3,536.01	through	3,562.00	136.00
3,562.01	through	3,588.00	137.00
3,588.01	through	3,614.00	138.00
3,614.01	through	3,640.00	139.00
3,640.01	through	3,666.00	140.00
3,666.01	through	3,692.00	141.00
3,692.01	through	3,718.00	142.00
3,718.01	through	3,744.00	143.00
3,744.01	through	3,770.00	144.00
3,770.01	through	3,796.00	145.00
3,796.01	through	3,822.00	146.00
3,822.01	through	3,848.00	147.00
3,848.01	through	3,874.00	148.00
3,874.01	through	3,900.00	149.00
3,900.01	through	3,926.00	150.00
3,926.01	through	3,952.00	151.00
3,952.01	through	3,978.00	152.00
3,978.01	through	4,004.00	153.00
4,004.01	through	4,030.00	154.00
4,030.01	through	4,056.00	155.00
4,056.01	through	4,082.00	156.00
4,082.01	through	4,108.00	157.00
4,108.01	through	4,134.00	158.00
4,134.01	through	4,160.00	159.00
4,160.01	through	4,186.00	160.00
4,186.01	through	4,212.00	161.00
4,212.01	through	4,238.00	162.00
4,238.01	through	4,264.00	163.00
4,264.01	through	4,290.00	164.00
4,290.01	through	4,316.00	165.00
4,316.01	through	4,342.00	166.00
4,342.01	through	4,368.00	167.00
4,368.01	through	4,394.00	168.00
4,394.01	through	4,420.00	169.00

(Effective for Benefit Years Established on or after July 4, 1993)

COLUMN A			COLUMN B
Average Wages Paid in Highest Two Quarters of Base Period		Weekly Benefit Amount	
\$ 4,420.01	through	\$ 4,446.00	\$170.00
4,446.01	through	4,472.00	171.00
4,472.01	through	4,498.00	172.00
4,498.01	through	4,524.00	173.00
4,524.01	through	4,550.00	174.00
4,550.01	through	4,576.00	175.00
4,576.01	through	4,602.00	176.00
4,602.01	through	4,628.00	177.00
4,628.01	through	4,654.00	178.00
4,654.01	through	4,680.00	179.00
4,680.01	through	4,706.00	180.00
4,706.01	through	4,732.00	181.00
4,732.01	through	4,758.00	182.00
4,758.01	through	4,784.00	183.00
4,784.01	through	4,810.00	184.00
4,810.01	through	4,836.00	185.00

(Effective for Benefit Years Established on or after July 3, 1994)

COLUMN A			COLUMN B
Average Wages Paid in Highest Two Quarters of Base Period		Weekly Benefit Amount	
\$ 4,836.01	through	\$ 4,862.00	\$186.00
4,862.01	through	4,888.00	187.00
4,888.01	through	4,914.00	188.00
4,914.01	through	4,940.00	189.00
4,940.01	through	4,966.00	190.00
4,966.01	through	4,992.00	191.00
4,992.01	through	5,018.00	192.00
5,018.01	through	5,044.00	193.00
5,044.01	through	5,070.00	194.00
5,070.01	through	5,096.00	195.00
5,096.01	through	5,122.00	196.00
5,122.01	through	5,148.00	197.00
5,148.01	through	5,174.00	198.00
5,174.01	through	5,200.00	199.00

(Effective for Benefit Years Established on or after July 7, 1996)

COLUMN A			COLUMN B
Average Wages Paid in Highest Two Quarters of Base Period		Weekly Benefit Amount	
\$ 5,200.01	through	\$ 5,226.00	\$200.00
5,226.01	through	5,252.00	201.00
5,252.01	through	5,278.00	202.00

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COLUMN A			COLUMN B
Average Wages Paid in Highest Two Quarters of Base Period			Weekly Benefit Amount
5,278.01	through	5,304.00	203.00
5,304.01	through	5,330.00	204.00
5,330.01	through	5,356.00	205.00
5,356.01	through	5,382.00	206.00
5,382.01	through	5,408.00	207.00
5,408.01	through	5,434.00	208.00
5,434.01	through	5,460.00	209.00
5,460.01	through	5,486.00	210.00
5,486.01	through	5,512.00	211.00
5,512.01	through	5,538.00	212.00
5,538.01	through	5,564.00	213.00
5,564.01	through	5,590.00	214.00
5,590.01	through	5,616.00	215.00
5,616.01	through	5,642.00	216.00
5,642.01	through	5,668.00	217.00
5,668.01	through	5,694.00	218.00
5,694.01	through	5,720.00	219.00
5,720.01	through	5,746.00	220.00

(Effective for Benefit Years Established on or after July 6, 1997)

COLUMN A			COLUMN B
Average Wages Paid in Highest Two Quarters of Base Period			Weekly Benefit Amount
\$ 5,746.01	through	\$ 5,772.00	\$221.00
5,772.01	through	5,798.00	222.00
5,798.01	through	5,824.00	223.00
5,824.01	through	5,850.00	224.00
5,850.01	through	5,876.00	225.00
5,876.01	through	5,902.00	226.00
5,902.01	through	5,928.00	227.00
5,928.01	through	5,954.00	228.00
5,954.01	through	5,980.00	229.00
5,980.01	through	6,006.00	230.00
6,006.01	through	6,032.00	231.00
6,032.01	through	6,058.00	232.00
6,058.01	through	6,084.00	233.00
6,084.01	through	6,110.00	234.00
6,110.01	through	6,136.00	235.00
6,136.01	through	6,162.00	236.00
6,162.01	through	6,188.00	237.00
6,188.01	through	6,214.00	238.00
6,214.01	through	6,240.00	239.00
6,240.01	through	6,266.00	240.00

(Effective for Benefit Years Established on or after July 5, 1998)

COLUMN A			COLUMN B
Average Wages Paid in Highest Two Quarters of Base Period			Weekly Benefit Amount
\$ 6,266.01	through	\$ 6,292.00	\$241.00
6,292.01	through	6,318.00	242.00
6,318.01	through	6,344.00	243.00
6,344.01	through	6,370.00	244.00
6,370.01	through	6,396.00	245.00
6,396.01	through	6,422.00	246.00
6,422.01	through	6,448.00	247.00
6,448.01	through	6,474.00	248.00
6,474.01	through	6,500.00	249.00
6,500.01	through	6,526.00	250.00
6,526.01	through	6,552.00	251.00
6,552.01	through	6,578.00	252.00
6,578.01	through	6,604.00	253.00
6,604.01	through	6,630.00	254.00
6,630.01	through	6,656.00	255.00

(Effective for Benefit Years Established on or after August 5, 2001)

COLUMN A			COLUMN B
Average Wages Paid in Highest Two Quarters of Base Period			Weekly Benefit Amount
\$ 6,656.01	through	\$ 6,682.00	\$256.00
6,682.01	through	6,708.00	257.00
6,708.01	through	6,734.00	258.00
6,734.01	through	6,760.00	259.00
6,760.01	through	6,786.00	260.00
6,786.01	through	6,812.00	261.00
6,812.01	through	6,838.00	262.00
6,838.01	through	6,864.00	263.00
6,864.01	through	6,890.00	264.00
6,890.01	through	6,916.00	265.00
6,916.01	through	6,942.00	266.00
6,942.01	through	6,968.00	267.00
6,968.01	through	6,994.00	268.00
6,994.01	through	7,020.00	269.00
7,020.01	through	7,046.00	270.00
7,046.01	through	7,072.00	271.00
7,072.01	through	7,098.00	272.00
7,098.01	through	7,124.00	273.00
7,124.01	through	7,150.00	274.00
7,150.01	and over		275.00

**(c) Weekly Benefit for Unemployment.**

(1) Effective for weeks beginning July 6, 1997, and after, each eligible claimant who is unemployed in any week shall be paid with respect to the week a benefit in an amount equal to the claimant's weekly benefit amount,

less that part of the wages, if any, payable to the claimant with respect to the week that is in excess of the greater of fifty dollars (\$50.00) or twenty-five percent (25%) of the claimant's weekly benefit amount.

(2) However, no otherwise eligible claimant shall be denied benefits for any week that the claimant has received remuneration for services performed in the Tennessee national guard.

(3) The benefit, if not a multiple of one dollar (\$1.00), shall be computed to the next lower multiple of one dollar (\$1.00).

(4) **Voluntary Withholding of Income Tax from Benefits.**

(A) An individual filing a new claim for benefits shall, at the time of filing the claim, be advised that:

- (i) Benefits are subject to federal, state and local income tax;
- (ii) Requirements exist pertaining to estimated tax payments;
- (iii) The individual may elect to have federal income tax deducted and withheld from the individual's payment of benefits at the amount specified in the Internal Revenue Code, compiled in 26 U.S.C.; and
- (iv) The individual shall be permitted to change a previously elected withholding status.

(B) Amounts deducted and withheld from benefits shall remain in the unemployment fund until transferred to the federal taxing authority as payment of income tax.

(C) The administrator shall follow all procedures specified by the United States department of labor and the internal revenue service pertaining to the deducting and withholding of income tax.

(D) Amounts shall be deducted and withheld under this section only after amounts are deducted and withheld for any overpayments of benefits, child support obligations, food stamp over-issuances or any other amounts required to be deducted and withheld under this chapter.

(5) If requested in writing by a claimant, the weekly benefit amount payable to the claimant shall be paid by direct deposit in an account at a financial institution selected by the claimant. With the written request, the claimant shall submit a void check which includes the bank routing numbers and the bank account number of the account selected by the claimant.

(6) If the benefits are paid by check:

(A) The full nine-digit social security number of the claimant shall be omitted from the check and the check stub or other document included in the envelope which contains the check; however, the redacted last four (4) digits of the social security number shall be permitted; and

(B) If the claimant files a written report that the check was not received by the claimant or if the check has been stolen and the claimant was not negligent or responsible for the check being stolen, the administrator shall reissue such check to the claimant within ninety (90) days of the date of the original check.

(d) **Maximum Benefits.**

(1) Beginning with those benefit years established on July 4, 1983, any otherwise eligible claimant shall be entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of:

- (A) Twenty-six (26) times the claimant's weekly benefit amount; or
- (B) One fourth ( $\frac{1}{4}$ ) of the claimant's wages for insured work paid during the claimant's base period.

(2) The total amount of benefits, if not a multiple of one dollar (\$1.00),

shall be computed at the next lower multiple of one dollar (\$1.00).

(3) No claimant will be entitled to benefits if the claimant's base period earnings are less than forty (40) times the claimant's weekly benefit amount.

(4) No claimant will be entitled to benefits if the claimant's base period earnings, outside the claimant's highest calendar quarter of earnings, are less than the lesser of six (6) times the claimant's weekly benefit amount or nine hundred dollars (\$900).

(e) [Deleted by 2013 amendment, effective July 1, 2013.]

#### **50-7-302. Benefit eligibility conditions.**

(a) **Personal Eligibility Conditions.** An unemployed claimant shall be eligible to receive benefits with respect to any week only if the administrator finds that all of the following conditions are met:

(1) The claimant has made a claim for benefits with respect to the week in accordance with rules or regulations the commissioner prescribes;

(2) The claimant has furnished to the division of employment security the claimant's social security account number, or numbers, if the claimant has more than one (1) social security account number;

(3) The claimant has registered for work, and thereafter continued to report, at an employment office as prescribed by the administrator, except that the administrator may waive or alter either or both of the requirements of this subdivision (a)(3) as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the administrator finds that compliance with the requirements would be oppressive, or would be inconsistent with the purposes of this chapter; provided, that no prescription, waiver or alteration shall conflict with § 50-7-301(a);

(4) The claimant is able to work, available for work, and making a reasonable effort to secure work. "Making a reasonable effort to secure work" means the claimant shall provide detailed information regarding contact with at least three (3) employers per week or shall access services at a career center created by the department. The administrator shall conduct random verification audits of one thousand five hundred (1,500) claimants weekly to determine if claimants are complying with the requirement of contacting at least three (3) employers per week or accessing services at a career center. The administrator shall disqualify any claimant receiving benefits who the administrator finds, as the result of a random audit or on information provided to the administrator, has provided false work search information for a period of not less than eight (8) benefit weeks. In determining whether the claimant is making a reasonable effort to secure work, the administrator shall consider the customary methods of obtaining work in the claimant's usual occupation or any occupation for which the claimant is reasonably qualified, the current condition of the labor market, and any attachment the claimant may have to a regular job;

(A) No claimant shall be considered ineligible in any week of unemployment for failure to comply with this subsection (a) if the failure is due to an illness or disability that occurred after the claimant has registered for work, and no work that would have been considered suitable at the time of the claimant's initial registration has been offered after the beginning of the illness or disability. The administrator may, however, in the administrator's discretion, require the claimant to obtain and submit a certificate by a duly licensed physician as to the illness or disability with respect to

each week that the illness or disability exists;

(B) No otherwise eligible claimant shall be denied benefits for any week because the claimant is in training with the approval of the administrator, nor shall the claimant be denied benefits with respect to any week in which the claimant is in training with the approval of the administrator by reason of the application of this subsection (a) relating to availability for work, or of § 50-7-303(a)(3) relating to failure to apply for, or refusal to accept, suitable work;

(C) The unemployment of a claimant for any week or any portion of a week, caused by a plant, departmental or other type of shutdown for vacation purposes shall not be the basis for a denial of benefits for the week, or portion of a week, if the claimant has not or will not receive any vacation pay from the claimant's employer for the period, when so found by the administrator;

(D) No otherwise eligible claimant shall be denied benefits by reason of the application of this subsection (a) who subsequent to the claimant's enrollment in and while attending a regularly established school, college or university, has been regularly employed and becomes unemployed and makes the claimant available for all suitable work, as determined by the administrator, to the same extent that the claimant was previously employed while continuing to attend and be enrolled in the regularly established school, college or university, but if the claimant is offered the same job that the claimant previously held immediately prior to entering the school and refuses the job, then the claimant shall become ineligible for the benefits provided by this chapter if the job meets the standards set forth in § 50-7-303(a)(3)(A) and (B) as required by applicable federal law;

(E) No provision of this subsection (a) or any other provision of law shall be construed to deny unemployment benefits to any claimant who is a veteran enrolled in school under the Veterans' Educational Assistance Program, commonly known as the "G.I. Bill", compiled in 38 U.S.C. § 1650 et seq., solely because of the claimant's enrollment and attendance in school, if the claimant is otherwise eligible for the benefits, except that if the claimant is offered the same job that the claimant previously held immediately prior to entering the school and refuses the job, then the claimant shall become ineligible for benefits as provided by § 50-7-303(a)(3) if the job meets the standards set forth in § 50-7-303(a)(3)(A) and (B) as required by applicable federal law; and

(F) [Deleted by 2013 amendment, effective July 1, 2013.]

(G) A claimant shall be considered ineligible for benefits if the claimant is incarcerated four (4) or more days in any week for which unemployment benefits are being claimed;

(5)(A) The claimant has been unemployed for a waiting period of one (1) week. For the purpose of this subsection (a), one (1) week of part total or partial unemployment or other forms of short time work shall be deemed one (1) week of unemployment. No week shall be counted as a week of unemployment for the purposes of this subsection (a), unless:

(i) It occurs within the benefit year that includes the week with respect to which the claimant claims payment of benefits;

(ii) No benefits have been paid with respect to the week to which the claimant claims payment of benefits; and

(iii) The claimant was eligible for benefits with respect to the week to which the claimant claims payment of benefits as provided in § 50-7-303 and this section, except for the requirements of this subsection (a);

(B) Benefits shall be payable to a claimant for the waiting period, provided the claimant has made a claim for benefits and is determined to be eligible and certified for benefits in the waiting period and in each of the three (3) consecutive weeks immediately following the waiting period;

(6) The claimant has satisfied the wages requirements of § 50-7-301(b);

(7) The claimant has satisfied the requirements of § 50-7-301(d); and

(8) The claimant participates in reemployment services, such as job search assistance services, if the claimant has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by the administrator, unless the administrator determines that:

(A) The claimant has completed the services; or

(B) There is justifiable cause for the claimant's failure to participate in the services.

(b) **Special Rules.** The following special rules shall apply in the circumstances indicated:

(1) If the qualifying base period wages of the claimant's current benefit year include wages paid prior to the establishment of a previous benefit year, the claimant shall not be eligible for any benefits under this chapter unless the claimant has been paid wages for insured work performed after the establishment of the previous benefit year equal to at least five (5) times the claimant's weekly benefit amount in the claimant's preceding benefit year;

(2) Benefits based on service after December 31, 1977, in employment defined in § 50-7-207(b)(3) and (c)(5) shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter; provided, that:

(A) With respect to services performed in an instructional, research or principal administrative capacity for an educational institution, benefits shall not be paid based on the services for any week of unemployment commencing during the period between two (2) successive academic years or terms, or, when an agreement provides instead for a similar period between two (2) regular but not successive terms, during that period, or during a period of paid sabbatical leave provided for in the claimant's contract, to any claimant if the claimant performs the services in the first of the academic years or terms, or if there is a contract or a reasonable assurance that the claimant will perform services in that capacity for any educational institution in the second of the academic years or terms;

(B) With respect to services performed in any other capacity for an educational institution:

(i) Benefits shall not be paid on the basis of the services to any individual for any week that commences during a period between two (2) successive academic years or terms, if the individual performs the services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform the services in the second of the academic years or terms, except that;

(ii) If compensation is denied to any claimant for any week under subdivision (b)(2)(B)(i) and the claimant was not offered an opportunity

to perform the services for any educational institution for the second of the academic years or terms, the claimant shall be entitled to a retroactive payment of compensation for each week for which the claimant filed a timely claim for compensation and for which compensation was denied solely by reason of subdivision (b)(2)(B)(i);

(C) With respect to weeks of unemployment beginning after December 31, 1977, benefits shall be denied to any claimant for any week that commences during an established and customary vacation period or holiday recess that has been predetermined as part of a school calendar prior to the beginning of each fiscal year if the claimant performs any services described in subdivision (b)(2)(A) or (b)(2)(B) in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the claimant will perform any such services in the period immediately following the vacation period or holiday recess;

(D) With respect to services performed for any educational institution, benefits shall not be payable on the basis of services in the capacities specified in subdivision (b)(2)(A), (b)(2)(B) or (b)(2)(C) to an individual who performed the services in an educational institution while in the employ of an educational service agency, and for this purpose "educational service agency" means a governmental entity that is established and operated exclusively for the purpose of providing the services to one (1) or more educational institutions; and

(E) With respect to services performed for an educational institution, benefits shall not be payable on the basis of services in any such capacities as specified in subdivision (b)(2)(A), (b)(2)(B), or (b)(2)(C) to an individual who provided such services to or on behalf of an educational institution.

(3) Benefits shall not be paid to any claimant on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week that commences during the period between two (2) successive sport seasons, or similar periods, if the claimant performed the services in the first of the seasons, or similar periods, and there is a reasonable assurance that the claimant will perform the services in the later of the seasons, or similar periods; and

(4) Benefits shall not be payable on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for the purposes of performing the services, or was permanently residing in the United States under color of law at the time the services were performed, including an alien who was lawfully present in the United States as the result of the application of the Immigration and Nationality Act, § 203(a)(7) or § 212(d)(5), compiled in 8 U.S.C. §§ 1153(a)(7) [repealed] and 1182(d)(5), respectively.

(A) Any data or information required of claimants applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all claimants applying for benefits.

(B) In the case of a claimant whose application for benefits would otherwise be approved, no determination that benefits to the claimant are not payable because of the claimant's alien status shall be made except upon a preponderance of the evidence.

(c) **Partial Unemployment Claims.** A penalty in the amount of fifty

dollars (\$50.00) may be assessed against any employer for failure to file partial claims required by regulations and within the time limits required by regulations for individuals having regular jobs with the employers, but who have sustained underemployment as defined in the regulations. In the event the commissioner finds that the employer had good cause for failure to comply with the regulations, this penalty may be waived.

**50-7-303. Disqualification for benefits.**

(a) **Disqualifying Events.** A claimant shall be disqualified for benefits:

(1)(A) If the administrator finds that the claimant has left the claimant's most recent work voluntarily without good cause connected with the claimant's work. The disqualification shall be for the duration of the ensuing period of unemployment and until the claimant has secured subsequent employment covered by an unemployment compensation law of this state, another state, or the United States, and was paid wages by the subsequent employment ten (10) times the claimant's weekly benefit amount. No disqualification shall be made under this section, however, if the claimant presents evidence supported by competent medical proof that the claimant was forced to leave the claimant's most recent work because the claimant was sick or disabled and notified the claimant's employer of that fact as soon as it was reasonably practical to do so, and returned to that employer and offered to work as soon as the claimant was again able to work, and to perform the claimant's former duties. Pregnancy shall be considered in the same way as any other illness or disability within the meaning of this subsection (a). At the expiration of the period, if the claimant is not reemployed, the claimant shall be entitled to unemployment benefits under this chapter, if otherwise eligible under this chapter. Nor shall this disqualification apply to a claimant who left the claimant's work in good faith to join the armed forces of the United States;

(B) The disqualification provided in subdivision (a)(1)(A) shall not apply to a claimant who left employment because the claimant's spouse is a member of the armed services of the United States, the spouse is the subject of a military transfer, and the claimant left employment to accompany the claimant's spouse; provided, however, that any benefits payable under this subdivision (a)(1)(B) shall be paid from the state's general revenue funds and the payment of any such benefits shall not adversely affect the employer's experience rating for purposes of determining premiums;

(2)(A) If the administrator finds that a claimant has been discharged from the claimant's most recent work for misconduct connected with the claimant's work, the disqualification shall be for the duration of the ensuing period of unemployment and until the claimant has secured subsequent employment covered by an unemployment compensation law of this state, another state, or the United States, and was paid wages by the subsequent employment ten (10) times the claimant's weekly benefit amount;

(B)(i) A discharge resulting from a positive result from a drug test for drugs administered in conformity with chapter 9 of this title shall be deemed to be a discharge for misconduct connected with the claimant's work;

(ii) A discharge resulting from an alcohol test administered in conformity with chapter 9 of this title, where the claimant's blood alcohol concentration level is equal to or greater than ten-hundredths of one percent (.10%) by weight for non-safety-sensitive positions, and four-hundredths of one percent (.04%), as determined by blood or breath testing, for safety-sensitive positions, shall be deemed to be a discharge for misconduct connected with work;

(iii) A discharge resulting from a refusal to take a drug test or an alcohol test authorized by chapter 9 of this title shall be deemed to be a discharge for misconduct connected with work where it is based upon substantial and material evidence of the employee's refusal;

(iv) As regards an injured employee, refusal shall not be presumed from failure to take the test during a period of approved medical leave;

(C) A discharge shall be deemed to be a discharge for misconduct connected with the claimant's work when it results after a claimant entered into a written agreement with an employer to obtain a license or certification by a specified date as a condition of employment and subsequently the claimant willfully fails without good cause to obtain such license or certification by the specified date;

(3)(A) If the administrator finds that the claimant has failed without good cause either to apply for available, suitable work, when so directed by the employment office or the administrator, or to accept suitable work when offered, or to return to the claimant's customary self-employment, if any, when so directed by the administrator. The disqualification shall continue for the week in which the failure occurred, and for the duration of the ensuing period of unemployment and until the claimant has secured subsequent employment covered by an unemployment compensation law of this state, another state, or the United States, and was paid wages by the subsequent employment ten (10) times the claimant's weekly benefit amount. In determining whether or not any work is suitable for a claimant, the administrator shall consider the degree of risk involved to the claimant's health, safety and morals, the claimant's physical fitness and prior training, the claimant's experience and prior earnings, the claimant's length of unemployment and prospects for securing local work in the claimant's customary occupation, and the distance of the available work from the claimant's residence. Work is suitable if the work meets all the other criteria of this subdivision (a)(3) and if the gross weekly wages for the work equal or exceed the following percentages of the claimant's average weekly wage for insured work paid to the claimant during that quarter of the claimant's base period in which the claimant's wages were highest:

(i) One hundred percent (100%), if the work is offered during the first thirteen (13) weeks of unemployment;

(ii) Seventy-five percent (75%), if the work is offered during the fourteenth through the twenty-fifth week of unemployment;

(iii) Seventy percent (70%), if the work is offered during the twenty-sixth through the thirty-eighth week of unemployment; and

(iv) Sixty-five percent (65%), if the work is offered after the thirty-eighth week of unemployment. This subdivision (a)(3) shall not be construed as requiring a claimant to accept employment below the federal minimum wage;

(B) Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this section to any otherwise eligible claimant for refusing to accept new work under any of the following conditions:

(i) If the position offered is vacant due directly to a strike, lockout or other labor dispute;

(ii) If the wages, hours or other conditions of the work offered are substantially less favorable to the claimant than those prevailing for similar work in the locality; or

(iii) If, as a condition of being employed, the claimant would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(4)(A) For any week with respect to which the administrator finds that the claimant's total or partial unemployment is due to a labor dispute, other than a lockout that is in active progress at the factory, establishment or other premises at which the claimant is or was last employed; provided, that this subdivision (a)(4) shall not apply if it is shown to the satisfaction of the administrator that:

(i) The claimant is not participating in the labor dispute that caused the claimant's total or partial unemployment;

(ii) The claimant does not belong to a grade or class of workers of which immediately before the commencement of the labor dispute there were members employed at the premises at which the labor dispute occurs, any of whom are participating in the dispute; and

(iii) The claimant was indefinitely separated from employment prior to the labor dispute and is otherwise eligible for benefits. Subdivision (a)(4)(A)(ii) notwithstanding, persons who were separated before the commencement of the labor dispute, and who were eligible for benefits as a result of the separation, shall continue to be eligible for benefits as long as they do not participate in the labor dispute and remain otherwise eligible. For purposes of this subdivision (a)(4)(A)(iii), an "indefinite separation" means that the relationship between the employee and employer has been severed without a reasonably definite recall date;

(B) If, in any case, separate branches of work that are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each department shall, for the purposes of this subsection (a), be deemed to be a separate factory, establishment or other premises;

(C) Disqualification imposed by this subdivision (a)(4) shall be for the duration of the labor dispute or until the claimant has secured employment covered by an unemployment compensation law of this state, another state, or the United States, and was paid by subsequent employment ten (10) times the claimant's weekly benefit amount. The subsequent employment must meet the definition of "most recent work" as set forth in subsection (b);

(5) For any week with respect to which the claimant is receiving, or has received, remuneration in the form of compensation for temporary partial disability under the workers' compensation law of any state or under a similar law of the United States;

(6)(A) For any week with respect to which, or a part of which the claimant has received, or is seeking, unemployment benefits under an unemploy-

ment compensation law of another state or of the United States; however, if the appropriate agency of the other state or of the United States finally determines that the claimant is not entitled to the unemployment benefits, this disqualification shall not apply. The disqualification imposed by this subdivision (a)(6)(A) shall not apply to any claimant who is seeking or who has received benefits provided for by the Veterans' Readjustment Assistance Act of 1952, Act of July 16, 1952, ch. 875, 66 Stat. 663 [repealed], and any payments previously made by the division of employment security to a claimant who was seeking or received simultaneous benefits under the Veterans' Readjustment Assistance Act of 1952 [repealed] are validated;

(B) In addition, a claimant shall be disqualified from obtaining the advantage of a waiting period for any week with respect to which, or a part of which, the claimant has received, or is seeking, unemployment benefits under an unemployment compensation law of another state or of the United States; however, if the appropriate agency of the other state or of the United States finally determines that the claimant is not entitled to the unemployment benefits, this disqualification shall not apply. The disqualification imposed by this subdivision (a)(6)(B) shall not apply to any claimant who is seeking or who has received benefits provided for by the Veterans' Readjustment Assistance Act of 1952 [repealed];

(7) For the week or weeks in which the administrator finds that the claimant has made any false or fraudulent representation or intentionally withheld material information for the purpose of obtaining benefits contrary to this chapter and for not less than four (4) nor more than the fifty-two (52) next following weeks, beginning with the week following the week in which the findings were made, as determined by the administrator in each case according to the seriousness of the facts. In addition, the claimant shall remain disqualified from future benefits so long as any portion of the overpayment or interest on the overpayment is still outstanding. In the event an overpayment of benefits results from the application of this disqualifying provision, the overpayment of benefits shall not be chargeable to any employer's account for experience rating purposes;

(8)(A) For any week with respect to which a claimant is receiving or is entitled to receive a pension, which includes a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment, under a plan maintained or contributed to by a base period or chargeable employer as follows: The weekly benefit amount payable to the claimant for that week shall be reduced, but not below zero (0):

(i) By the entire prorated weekly amount of the pension if one hundred percent (100%) of the contributions to the plan were provided by a base period or chargeable employer; provided, that no reduction shall be made if one hundred percent (100%) of the pension is rolled into an individual retirement account (IRA); and

(ii) By no part of the pension if any contributions to the plan were provided by the claimant during the claimant's base period;

(B) No reduction shall be made under this subdivision (a)(8) by reason of the receipt of a pension if the services performed by the claimant during the base period for the employer, or remuneration received for the services, did not affect the claimant's eligibility for, or increase the amount of, the pension, retirement or retired pay, annuity, or similar payment. The conditions specified by this subsection (a) shall not apply to pensions paid

under the Social Security Act, compiled in 42 U.S.C. § 301 et seq., or the Railroad Retirement Act of 1974, or the corresponding provisions of prior law. Payments made under those acts shall be treated solely in the manner specified by subdivisions (a)(8)(A)(i) and (ii);

(C) For purposes of this subdivision (a)(8), if any reduced benefit payment for any week is not a multiple of one dollar (\$1.00), it shall be computed to the next lower multiple of one dollar (\$1.00);

(D) Any annuities, pensions or retirement pay that is disqualifying pursuant to this section and is payable at the option of the claimant on either a lump sum or periodic basis shall be treated as though it were paid on the periodic basis specified;

(E) For purposes of this subdivision (a)(8), an individual shall be deemed entitled to receive a pension if a determination has been made by appropriate officials of the individual's vested right to a pension for any week in which the individual is entitled to receive benefits under this chapter;

(9)(A) For any week for which a claimant receives the claimant's regular wages for a vacation period under terms of a labor-management agreement or other contract of hire allocating the pay to designated week or weeks for vacation purposes, but if the remuneration for any week is less than the benefit that would be due the claimant for the week under this chapter, the claimant shall be entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration; provided, that the total amount of benefits, if not a multiple of one dollar (\$1.00), shall be computed at the next lower multiple of one dollar (\$1.00);

(B) Subdivision (a)(9)(A) shall apply only if it is found by the administrator that employment will be available for the claimant with the employer at the end of a vacation period described in this subsection (a);

(C) If an employee elects to take the employee's vacation at a period other than that designated in the agreement or contract of hire, any vacation pay shall be considered as having been paid for the vacation week or weeks designated in the agreement or contract of hire;

(10) If the administrator finds that a claimant has been discharged from the claimant's most recent work because such claimant's actions, not previously known or permitted by the employer, placed the claimant's employer in violation of the Fair Labor Standards Act, compiled in 29 U.S.C. § 201 et seq., the disqualification shall be for the duration of the ensuing period of unemployment and until the claimant has secured subsequent employment covered by an unemployment compensation law of this state, or another state, or of the United States, and was paid wages by the subsequent employment ten (10) times the claimant's weekly benefit amount;

(11) For any week with respect to which the claimant is receiving, or has received, remuneration in the form of wages in lieu of notice unless the claimant's employer has filed notice pursuant to § 50-1-602 as of July 1, 2012;

(12) If the claimant received a severance package from an employer that includes an equivalent amount of salary the employee would have received if the employee was working during that week unless the claimant's employer has filed notice pursuant to § 50-1-602 as of July 1, 2012;

(13) If the claimant was discharged from the claimant's most recent work through a layoff by the employer and the employer has offered the claimant

the same job the claimant had prior to the layoff or a similar job with an equivalent level of compensation that the claimant had prior to the layoff. The disqualification shall be for the duration of the ensuing period of unemployment and until the claimant has secured subsequent employment covered by an unemployment compensation law of this state, another state, or the United States, and was paid wages by the subsequent employment ten (10) times the claimant's weekly benefit amount; or

(14) If the claimant has an offer of work withdrawn by an employer due to the claimant's refusal to submit to a drug test or the claimant's positive result from a drug test. The disqualification shall be for the duration of the ensuing period of unemployment and until the claimant has secured subsequent employment covered by an unemployment compensation law of this state, another state, or the United States, and was paid wages by the subsequent employment ten (10) times the claimant's weekly benefit amount.

(b) **Definitions.** The following definitions apply with respect to the following subdivisions of this section:

(1) For purposes of subdivisions (a)(1) and (2), "most recent work" means employment with:

(A) Any employer covered by an unemployment compensation law of this state, another state, or the United States for whom the claimant last worked and voluntarily quit without good cause connected with the claimant's work;

(B) Any employer covered by an unemployment compensation law of this state, another state, or the United States for whom the claimant last worked and was discharged for misconduct connected with the claimant's work; or

(C) Any employer covered by an unemployment compensation law of this state, another state, or the United States for whom the claimant last worked and earned wages equal to or exceeding ten (10) times the claimant's weekly benefit amount or, if the wages paid are less than ten (10) times the claimant's weekly benefit amount, it shall be considered as the "most recent work" when a preponderance of evidence establishes that the intent of the hiring agreement was to provide for regular permanent employment. Short term employment shall be considered most recent work if the employment is traditionally a part of the claimant's chosen profession;

(2) For purposes of subdivision (c)(2), "suitable employment" means, with respect to a claimant, work of a substantially equal or higher skill level than the claimant's past adversely affected employment as defined for purposes of the Trade Act of 1974, compiled in 19 U.S.C. § 2101 et seq., and wages for the work at not less than eighty percent (80%) of the claimant's average weekly wage as determined for the purposes of the Trade Act of 1974;

(3) For purposes of subdivision (a)(2):

(A) "Misconduct" includes, but is not limited to, the following conduct by a claimant:

- (i) Conscious disregard of the rights or interests of the employer;
- (ii) Deliberate violations or disregard of reasonable standards of behavior that the employer expects of an employee;
- (iii) Carelessness or negligence of such a degree or recurrence to show an intentional or substantial disregard of the employer's interest or to

manifest equal culpability, wrongful intent or shows an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employee's employer;

(iv) Deliberate disregard of a written attendance policy and the discharge is in compliance with such policy;

(v) A knowing violation of a regulation of this state by an employee of an employer licensed by this state, which violation would cause the employer to be sanctioned or have the employer's license revoked or suspended by this state; or

(vi) A violation of an employer's rule, unless the claimant can demonstrate that:

(a) The claimant did not know, and could not reasonably know, of the rule's requirements; or

(b) The rule is unlawful or not reasonably related to the job environment and performance;

(B) "Misconduct" also includes any conduct by a claimant involving dishonesty arising out of the claimant's employment that constitutes an essential element of a crime for which the claimant was convicted;

(C) "Misconduct" also includes any conduct constituting a criminal offense for which the claimant has been convicted or charged that:

(i) Involves dishonesty arising out of the claimant's employment; or

(ii) Was committed while the claimant was acting within the scope of employment; and

(D) "Misconduct" does not include:

(1) Inefficiency, or failure to perform well as the result of inability or incapacity;

(2) Inadvertence or ordinary negligence in isolated instances; or

(3) Good faith errors in judgment or discretion; and

(4) For purposes of subdivision (a)(11), "wages in lieu of notice" means wages paid under circumstances where the employer, not having given an advance notice of separation to the employee, and irrespective of the length of service of the employee, makes a payment to the employee equivalent to the wages the employee could have earned had the employee been permitted to work during the period of notice.

(c) **Qualifications.** Notwithstanding any other law to the contrary:

(1) Benefits shall not be denied under this chapter to any otherwise eligible claimant for separation from employment pursuant to a labor-management contract or agreement, or pursuant to an established employer plan, program, policy, layoff or recall that permits the claimant (employee), because of lack of work, to accept a separation from employment. However, benefits shall be denied a claimant for separation from employment resulting from the claimant's acceptance of an employer's program that provides incentives to employees for voluntarily terminating their employment;

(2) No otherwise eligible claimant shall be denied benefits for any week because of leaving work to enter training approved under § 236(a)(1) of the Trade Act of 1974, codified in 19 U.S.C. § 2296(a)(1), provided the work left is not suitable employment, as defined in § 236(e) of the Trade Act of 1974, codified in 19 U.S.C. § 2296(e), or because of the application to any such week in training of provisions in this law or any applicable federal unemployment compensation law relating to active search for work, availability for work or refusal to accept suitable work; and

(3) Benefits shall not be reduced or denied under this chapter to any otherwise eligible claimant due to such claimant's enrollment in any institution of higher education.

**(d) Overpayments.**

(1) Any person who is overpaid any amounts as benefits under this chapter is liable to repay those amounts, except as otherwise provided by this subsection (d) or by § 50-7-304(b)(2).

(2) Upon written request by any person submitted to the administrator within ninety (90) days from the date of determination of the overpayment, the administrator shall waive repayment of the overpaid amounts if the person proves to the satisfaction of the administrator that all of the following conditions exist:

(A) The overpayment was not due to fraud, misrepresentation or willful nondisclosure on the part of the person;

(B) The overpayment was received without fault on the part of the person; and

(C) The recovery of the overpayment from the person would be against equity and good conscience.

(3)(A) The administrator may waive the collection of any overpayment that is due to fraud, misrepresentation or willful nondisclosure on the part of the person who was overpaid and that is outstanding after the expiration of six (6) years from the date of determination of the overpayment.

(B) The administrator may waive the collection of any overpayment that is not due to fraud, misrepresentation or willful nondisclosure on the part of the person who was overpaid and that is outstanding after the expiration of six (6) years from the date of determination of the overpayment.

(C) If a waiver is given by the administrator pursuant to subdivision (d)(3)(A) or (d)(3)(B), such waiver shall only be made by the administrator in accordance with § 4-4-120 and procedures established pursuant to such section.

(4) Any person who is overpaid any amounts as benefits under this chapter has the right to appeal the determination of overpayment. A person may request a waiver of overpayment in accordance with the conditions of subdivision (d)(2). Upon determination that a person has been overpaid, the person shall be given timely notice of the person's right to appeal the determination of overpayment in accordance with § 50-7-304, and the person's right to request a waiver of overpayment in accordance with subdivision (d)(2). The notice shall indicate that there is a determination of overpayment, the reasons for the determination, the person's rights to contest the determination or request a waiver of the overpayment, and the time period during which the appeal must be filed or the waiver request must be submitted. A recovery of overpayment by reduction of benefits as to a subsequent claim shall not occur until notice is provided to a person, previously determined to be overpaid, of the person's right to request a waiver of overpayment in accordance with subdivision (d)(2).

**(e)(1) Back Pay Awards.** For unemployment insurance benefit purposes, the amount of back pay constitutes wages paid in the period for which it was awarded. Any employer who is a party to a back pay award settlement due to loss of wages is required to report to the division of employment security

within thirty (30) days of the ruling:

- (A) The amount of the award settlement;
- (B) The name and social security number of the recipient; and
- (C) The calendar weeks for which the back pay was awarded.

(2) It is the intent of the general assembly that no overpayment of benefits shall be established as a result of a back pay award.

#### **50-7-304. Procedure for claims and appeals.**

(a) **Filing.** Claims for benefits shall be made in accordance with regulations the commissioner prescribes. Each employer shall post and maintain, in places readily accessible to individuals performing services for the employer, printed statements concerning benefit rights, claims for benefits and other matters relating to the administration of this chapter that the commissioner prescribes by regulation. Each employer shall supply to the individuals copies of the printed statements or other materials relating to claims for benefits when and if the commissioner prescribes by regulation. If the commissioner, as a result of the regulations or otherwise, elects to supply the printed statements or other materials to any employer or employers, it will be done without cost to the employer or employers.

(b) **Determinations.**

(1)(A) **Monetary Determination.** A representative designated by the commissioner, and referred to as the “agency representative,” shall promptly examine the claim and, on the basis of the facts found by the agency representative, shall either determine whether or not the claim is valid monetarily and, if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration of the benefit. The claimant shall be furnished a copy of the monetary determination showing the amount of wages paid the claimant by each employer during the claimant’s base period and the employers by whom the wages were paid, the claimant’s benefit year, weekly benefit amount, and the maximum amount of benefits that may be paid to the claimant for unemployment during the benefit year. When a claimant is ineligible due to lack of earnings in the claimant’s base period, the monetary determination shall so designate. The claimant shall be allowed ninety (90) days from the mailing date, or in-person delivery of the claimant’s monetary determination to the claimant, within which to protest the claimant’s monetary determination.

(B) **Nonmonetary Determination.** Further, the agency representative shall then review the claim deemed valid monetarily and render a determination on the nonmonetary issues presented, except that in any case in which the payment or denial of benefits will be determined by § 50-7-303(a)(4), the agency representative shall promptly transmit the agency representative’s full findings of fact with respect to § 50-7-303(a)(4) to the commissioner, who, on the basis of the evidence submitted and additional evidence that the commissioner may require, shall affirm, modify or set aside the findings of fact and transmit to the agency representative a decision upon the issues involved under § 50-7-303(a)(4), which shall be deemed to be the nonmonetary determination of the agency representative. Any questions or issues involved in any nonmonetary determination may be referred by the commissioner to an unemployment

hearing officer, who shall make the unemployment hearing officer's determination with respect to the nonmonetary determination in accordance with the procedure described in subdivision (c)(1). The agency representative shall promptly give written notice to the claimant and all other interested parties of the nonmonetary determination and the reasons for the determination. The nonmonetary determination of the agency representative shall become final, unless an interested party files an appeal from the nonmonetary determination within fifteen (15) calendar days after the date of mailing of the written notification of the nonmonetary determination to the last known address of the party, or within fifteen (15) calendar days after the date the written notification is given to the party, whichever first occurs.

(C) **Reconsideration.** At any time within one (1) year from the date of the making of any monetary or nonmonetary determination, the agency representative may, for good cause, reconsider the agency representative's decision, unless an interested party has appealed the monetary or nonmonetary determination and the appeals tribunal has accepted jurisdiction, and shall promptly give written notice to the claimant and all other interested parties of the agency representative's amended monetary or nonmonetary determination and the reason for the amended determination. There shall be no one (1) year limitation on the agency representative reconsidering a decision if a claimant is subsequently convicted of a misdemeanor or felony that caused the separation from the employer; provided, however, that the employer gives notification of the conviction in a reasonable time to the agency. Any overpayment created as a result of a reconsideration because a claimant is subsequently convicted of a misdemeanor or felony that cause the separation from the employer shall be determined to be fraud and the administrator shall not waive repayment of the overpaid amounts.

**(2) Payment — Overpayments — Employer Response to Request for Separation Information — Employer Charges for Overpayment.**

(A) **Payment.** Benefits shall be paid promptly in accordance with the agency decision or any decision of the appeals tribunal, the commissioner's designee or a reviewing court.

(i) The payment shall be made upon the issuance of the decision unless and until the decision has been modified or reversed by a subsequent decision. The payment shall be made regardless of the pendency of any application for reconsideration, filing of an appeal, or a petition for judicial review.

(ii) If and when the decision has been modified or reversed, benefits shall be paid or denied for weeks of unemployment thereafter in accordance with the modifying or reversing decision.

(B) **Overpayments.** If no fraud or misrepresentation on the part of the claimant is involved and a subsequent decision adverse to the claimant results because of the employer's failure to respond as described in subdivision (b)(2)(C) or results because the employer did not appear for a scheduled hearing before the appeals tribunal or the commissioner's designee, no overpayment will be established and the claimant will not be required to repay any benefits paid prior to the decision. Otherwise, the claimant will be charged with any benefits paid, and shall be liable to have the payments deducted from future benefits payable under this chapter, or

shall be liable to repay the commissioner, for deposit in the unemployment compensation fund, a sum equal to the amount so received, and the sum shall be collectible in the manner provided in § 50-7-404(b), for collection of past due premiums.

(C) **Employer Response to Request for Separation Information.** If a separation issue exists, the separating employer will be asked to supply information describing circumstances leading to the separation. The information must be received by the agency within seven (7) days from the date the agency request for information is mailed to the separating employer. In the absence of the response, the decision of entitlement will be based on the claimant's statement and other information available to the agency. The separating employer may supply information to the agency prior to a request for information being mailed from the agency if the employer expects a separation issue to arise with regard to an employee.

(D) **Employer Charges for Overpayments.** If the decision approving the claim is finally reversed, no premium paying employer's account shall be charged with any benefits so paid. The separating employer who fails to respond as described in subdivision (b)(2)(C) or who did not appear for a scheduled hearing before the appeals tribunal or the commissioner's designee will be charged with that portion of benefits paid that are attributable to wages paid in its employment during the base period.

(E) **Offset expenses and fees.**

(i) In addition to any remedies authorized by this chapter, the department may offset any covered unemployment compensation debt due to the department against any federal income tax refund due to the department's claimant debtor in accordance with § 6402 of the Internal Revenue Code, codified in 26 U.S.C. § 6402, and the federal Treasury Offset Program, compiled in 31 CFR part 285, or any successor program.

(ii) The department may exercise this right of setoff if the obligation of the debtor was the result of:

(a) Fraud or the claimant debtor's failure to report earnings; or

(b) Any penalties and interest assessed by the department on a debt contemplated by this subdivision (b)(2)(E).

(iii) Any fee or administrative expense imposed by the United States department of the treasury or the United States department of labor in connection with such offset shall be the responsibility of the debtor.

(iv) Following such offset, the amount of credit to which a debtor is entitled shall not exceed the amount of the credit received by the department.

(c) **Appeals.**

(1) In the case of an appeal that has been filed pursuant to subdivision (b)(1) and that has not been withdrawn, an unemployment hearing officer shall first afford all interested parties reasonable opportunity for a fair hearing, and the unemployment hearing officer shall affirm, modify or set aside the findings of fact and decision of the agency representative. The unemployment hearing officer promptly shall give written notice to all interested parties of the unemployment hearing officer's decision and the reasons for the decision. The decision of the unemployment hearing officer shall be deemed to be the final decision of the commissioner, unless further appeal is initiated pursuant to subsection (e) within fifteen (15) calendar

days after the date of mailing of the written notification of the decision to the last known address of each interested party, or within fifteen (15) calendar days after the date the written notification of the decision is given to each interested party, whichever first occurs. In the absence of an appeal to the commissioner's designee and within thirty (30) calendar days after the date of mailing of the written notification of the decision to the last known address of each interested party or within thirty (30) calendar days after the date the written notification of the decision is given to each interested party, whichever first occurs, the unemployment hearing officer may reconsider the unemployment hearing officer's decision and thereupon promptly shall give written notice to the claimant and all other interested parties of the amended decision and the reasons for the decision. The amended decision of the unemployment hearing officer shall be deemed to be the final decision of the commissioner, unless further appeal is initiated pursuant to subsection (e) within fifteen (15) calendar days after the date of mailing of the written notification of the decision to the last known address of each interested party, or within fifteen (15) calendar days after the date the written notification of the decision is given to each interested party, whichever first occurs.

(2) Notwithstanding any other provision of this chapter, the time limit provided in subdivision (b)(1) for an appeal to the appeals tribunal may be extended for good cause by the appeals tribunal, and the time limit provided in subdivision (c)(1) for an appeal to the commissioner's designee may be extended for good cause by the commissioner's designee. In determining whether or not good cause exists for extending the time limits, the appeals tribunal and the commissioner's designee shall consider the length of the delay, the reason for the delay, and the prejudice or lack of prejudice to the parties.

(d) **Unemployment Hearing Officers.** To hear and decide disputed claims, the commissioner shall appoint one (1) or more unemployment hearing officers selected in accordance with § 50-7-605. No person shall participate on behalf of the commissioner or the commissioner's designee in any case in which the person is an interested party. The commissioner may designate any regular qualified employee or employees of the department of labor and workforce development as temporary or acting unemployment hearing officers who shall serve as hearing officers without additional salary and for the period of time the commissioner designates. All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter. All permanently and temporarily appointed unemployment hearing officers will constitute a part of the unemployment compensation division. The commissioner shall provide the designees designated to hear second stage appeals and the unemployment hearing officers with proper facilities and assistants for the execution of their functions. The department shall hold annual training for all unemployment hearing officers. Such training shall include updates on any new laws or regulations involving employment security law enacted by the state or federal government.

(e) **Commissioner's Designees.**

(1) The commissioner shall designate Tennessee licensed attorneys within the department of labor and workforce development to adjudicate appeals of the decision of the unemployment hearing officer. The individuals so designated shall be referred to as the commissioner's designees and will constitute a part of the department of labor and workforce development's legal

division.

(2) The commissioner's designees may on their own motion affirm, modify, or set aside any decision of an unemployment hearing officer on the basis of the evidence previously submitted in the case, or direct the taking of additional evidence, or may permit any of the parties to the decision to initiate further appeals before it. The commissioner's designee shall permit the further appeal by any of the parties interested in a decision of an unemployment hearing officer. The commissioner may remove to a designee or transfer to another unemployment hearing officer proceedings of any claim pending before an unemployment hearing officer. The commissioner's designee shall promptly give written notice to all interested parties of his or her findings and decision. Any decision of the commissioner's designee shall be the final decision of the commissioner.

(f) **Procedure.** The manner in which disputed claims shall be presented, the reports required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the commissioner for determining the rights of the parties, whether or not the regulations conform to common law or statutory rules of evidence and other technical rules of procedure; provided, that proof of misconduct may include personnel records and other business records that are in the possession of a claimant's employer and that are relevant to a claim, and such records shall be admissible and may constitute evidence of misconduct, regardless of whether such evidence is hearsay or whether corroborated by direct witness testimony, if such evidence is accompanied by an affidavit of its custodian or other qualified person certifying the evidence as a business record. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed, unless the disputed claim is appealed to chancery court. Notwithstanding § 4-5-312(c) or any other provision to the contrary, the appeals tribunal and the commissioner's designee may, for good cause, hold all or part of the hearing by telephone conference. In determining good cause, the appeals tribunal and commissioner's designee shall consider the wishes of the parties and such factors as the physical security risk to the participants or the department's staff, the travel distance to the hearing location for either or both parties, the relative hardship or convenience to the parties, the complexity of the issues and any other factor relevant to having a fair hearing.

(g) **Witness Fees.** Witnesses subpoenaed pursuant to this section shall be allowed fees at the rates fixed by the commissioner; provided, that the rates shall not be less than the per diem and mileage rates fixed by the laws of the state in other civil cases. The fees are deemed a part of the expense of administering this chapter.

(h) **Appeal to Courts.** Any decision of the commissioner, in the absence of any application by any interested party for rehearing of that decision, shall become final ten (10) calendar days after the date of mailing of the written notification of the decision to the last known address of each interested party or within ten (10) calendar days after the date the written notification of the decision is given to each interested party, whichever first occurs. In the written notification shall be an explanation that further appeals shall be conducted within thirty (30) days of the commissioner's final decision by filing a petition for judicial review in the chancery court of the county of the party's residence and that the petition shall be against the commissioner of labor and workforce

development. Judicial review of any decision of the commissioner shall be permitted only after any party claiming to be aggrieved by the decision has exhausted the administrative remedies provided by this chapter.

(i) **Court Review.**

(1) Within thirty (30) days after the decision of the commissioner has become final, any party aggrieved by the decision may secure judicial review of the decision by filing a petition for judicial review in the chancery court of the county of the party's residence against the commissioner for review of the decision, except that any petition for judicial review of tax liability must be filed in the chancery court of Davidson County. In the case of a petition filed by an aggrieved party who is not a resident of the state, within thirty (30) days after the decision of the commissioner's designee has become final, a nonresident party may secure judicial review of the decision by filing a petition for judicial review against the commissioner in the chancery court of the county where the employer is located, except that any petition for judicial review of tax liability must be filed in the chancery court of Davidson County. Any other party to the proceeding before the commissioner's designee shall be made a defendant to the petition and duly served with process. For the purposes of this subsection (i), the parties to the proceeding before the commissioner's designee shall be deemed to include the original claimant or applicant for benefits, and each and every employer from whom the claimant received, during the claimant's base period, any wages for insured work, whether or not the party appeared and participated in the proceeding before the commissioner's designee; and all the parties shall be deemed necessary parties to any petition for judicial review filed pursuant to this subsection (i). In such action, the petition shall distinctly state the grounds upon which the review is sought, and shall be served through the normal processes of the court upon the commissioner or the attorney general and reporter. Immediately upon the filing of the petition, the petitioner shall cause to be forwarded to the commissioner, for informational purposes, a copy of the petition, which shall be in addition to the copy of the petition served by the court at the time of service of the process. With the commissioner's answer, which shall be filed within thirty (30) days from the date the commissioner or the attorney general and reporter is served with the process, the commissioner shall file in the court a complete transcript of the record, which shall contain all documents and papers, a transcript of all testimony taken in the matter and findings of fact and conclusions of law by the commissioner's designee.

(2) The chancellor may affirm the decision of the commissioner or the chancellor may reverse, remand or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (A) In violation of constitutional or statutory provisions;
- (B) In excess of the statutory authority of the agency;
- (C) Made upon unlawful procedure;
- (D) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (E) Unsupported by evidence that is both substantial and material in the light of the entire record.

(3) In determining the substantiality of evidence, the chancellor shall take into account whatever in the record fairly detracts from its weight, but

the chancellor shall not substitute the chancellor's judgment for that of the commissioner's designee as to the weight of the evidence on questions of fact. No decision of the commissioner's designee shall be reversed, remanded or modified by the chancellor, unless for errors that affect the merits of the final decision of the commissioner's designee. The petition for judicial review shall be heard by the chancellor either at term time or vacation as a matter of right, any other statute of this state to the contrary notwithstanding.

(4) It shall not be necessary in any judicial proceedings under this section to enter exceptions to the ruling of the commissioner's designee, but the petition shall distinctly state the grounds upon which the action of the commissioner's designee is deemed erroneous. An appeal may be taken from the judgment and decree of the chancery court having jurisdiction of these controversies to the Tennessee court of appeals, in the same manner, but not inconsistent with this chapter, as provided in other civil cases.

(5) In any judicial proceeding under this subsection (i), the appellant or petitioner shall give bond for costs, or in lieu of bond take the oath prescribed by law for paupers.

(6) Upon the final determination of the judicial proceedings, the commissioner's designee shall enter an order in accordance with the final judicial determination.

(j) **Notice of Health Insurance.** The commissioner, in performing the duties established in this section, shall provide to every individual at the time the individual first inquires about unemployment compensation benefits the following notice:

You may be entitled to have the state of Tennessee pay the premium for your on-going health insurance. For more information, contact your local department of human services.

(k) **Conclusiveness of Findings.** No finding of fact or law, judgment, conclusion, or final order made with respect to a claim for unemployment compensation under this chapter may be conclusive in any separate or subsequent action or proceeding in another forum, except proceedings under this chapter, regardless of whether the prior action was between the same or related parties or involved the same facts.

#### **50-7-407. Continuous part-time employment — "Reimbursing employer" defined.**

(a) Notwithstanding any other provision of this chapter to the contrary, if a claimant employed by a reimbursing employer on a continuous part-time basis continues to be employed by the reimbursing employer while separated from other employment and is eligible for benefits, any benefits paid will not be considered attributable to the service with the reimbursing employer.

(b) For the purposes of this section, "reimbursing employer" means an eligible employer who elects to reimburse the state for benefits paid in lieu of premiums, as provided by the Federal Unemployment Tax Act, compiled in 26 U.S.C. § 3301 et. seq., or this chapter.

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**50-7-408 — 50-7-450. [Reserved.]**

**50-7-451. Job skills program — Job skills fee — Job skills fund — Grants — Reports to general assembly.**

(a)(1) The Tennessee job skills program is created in the department of economic and community development as a workforce development incentive program to enhance employment opportunities and to meet the needs of existing and new industries in this state.

(2) The program shall give priority to the creation and retention of high wage jobs and focus on employers in industries that promote high-skill, high-wage jobs in high-technology areas, emerging occupations or skilled manufacturing jobs.

(3) At least seventy percent (70%) of the Tennessee job skills funds, as provided in subsection (c), that are spent on Tennessee job skills grants shall be used for assisting existing employers.

(b) [Deleted by 2009 amendment.]

(c)(1) The Tennessee job skills fund is established as a separate account in the general fund.

(2) The Tennessee job skills fund is composed of:

(A) Money transferred into the Tennessee job skills fund from Tennessee job skills fees collected for calendar quarters occurring through December 31, 2001;

(B) Gifts, grants, and other donations received by the department of economic and community development for the Tennessee job skills fund; and

(C) Funds appropriated by the general assembly for the Tennessee job skills fund.

(3) Money in the Tennessee job skills fund may be used by the department of economic and community development for program administration, marketing expenses, and program evaluation; however, the expenses shall not exceed five percent (5%) of the total amount appropriated for the program in any fiscal year.

(4)(A) Amounts remaining in the Tennessee job skills fund at the end of each fiscal year shall not revert to the general fund.

(B) Moneys in the Tennessee job skills fund shall be invested by the state treasurer pursuant to title 9, chapter 4, part 6, for the sole benefit of the Tennessee job skills fund, and interest accruing on investments and deposits of the fund shall be returned to the fund and remain part of the Tennessee job skills fund.

(5) It is the intent of the general assembly that, to the extent practicable, money from the Tennessee jobs skills program shall be spent in all areas of the state.

(d)(1) The general assembly shall annually, in the general appropriations act, appropriate the amount to be available in that fiscal year for Tennessee job skills grants. It is the legislative intent that new commitments for Tennessee job skills grants made by the commissioner of economic and community development from the Tennessee job skills fund program shall not exceed appropriations made for such purposes. It is further the legislative intent that in each fiscal year the Tennessee job skills program be managed so that actual expenditures and obligations to be recognized at the end of the fiscal year shall not exceed any available reserves and appropria-

tions of the programs.

(2) The commissioner of economic and community development shall annually report to the finance, ways and means committees of the house of representatives and the senate and the consumer and human resources committee of the house of representatives, the commerce and labor committee of the senate and the office of legislative budget analysis on the status of the Tennessee job skills appropriation. The report shall incorporate the information required to be filed by each employer who receives a Tennessee job skills grant pursuant to subsection (e), as well as including information concerning the amount of each grant authorized and each commitment accepted since the previous report and the name of the employer receiving the benefit of the grant or commitment, the total outstanding grants and commitments and the total unobligated appropriation.

(3) The following employers may apply for a Tennessee job skills grant from the Tennessee job skills fund:

(A) One (1) or more employers to secure training for demand occupations, emerging occupations, or manufacturing occupations;

(B) One (1) or more employers acting in partnership with an employer organization, labor organization, or community-based organization to secure training for demand occupations, emerging occupations, or manufacturing occupations; and

(C) One (1) or more employers acting in partnership with a consortium composed of more than one (1) provider to secure training for demand occupations, emerging occupations, or manufacturing occupations.

(4) All Tennessee job skills grant applications must contain the following:

(A) The number and kinds of jobs available;

(B) The skills and competencies required for the identified jobs;

(C) The starting wages to be paid to trainees on successful completion of the project;

(D) The goals, objectives, and outcome measurements for the project;

(E) The proposed curriculum for the project;

(F) The projected cost per person enrolled, trained, hired and retained in employment; and

(G) Any other information deemed necessary by the department of economic and community development.

(5) Tennessee job skills grants from the Tennessee job skills fund shall be awarded only to employers who certify that:

(A) A job or job opening exists or will exist at the end of the project for which the Tennessee job skills grant is sought;

(B) Job openings will be filled by participants in the project; and

(C) The starting wage for a new job created through the project will be equal to or greater than the prevailing starting wage for that occupation in the local labor market area.

(e) Each employer who receives a Tennessee job skills grant pursuant to this section shall file a final report with the department of economic and community development at the conclusion of the Tennessee job skills grant period that contains the following information:

(1) The number of participants in the project who are employed at the conclusion of the project;

(2) The number of participants in the project who are not employed at the end of the project;

(3) The starting wage of each participant employed; and

(4) Any other information required by the department of economic and community development.

(f) The department of economic and community development shall adopt rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to implement this section. Prior to the formal submission of rules and regulations in accordance with the Uniform Administrative Procedures Act, the department of economic and community development shall submit draft rules and regulations to the finance, ways and means committee of the senate and the finance, ways and means committee of the house of representatives. The committees shall comment on the rules and regulations within sixty (60) days.

(g) The department of economic and community development shall report annually to the finance, ways and means committee of the senate and the finance, ways and means committee of the house of representatives on the Tennessee jobs skills program. On February 1, 2002, and every year thereafter, the comptroller of the treasury shall report to the finance, ways and means committee of the senate and the finance, ways and means committee of the house of representatives on the utilization of the funds.

(h) As used in this section, unless the context otherwise requires:

(1) "Demand occupation" means an occupation in which, as a result of business development, there is or will be positive job growth to job replacement ratios within the next twelve (12) to twenty-four (24) months, according to the best available sources of state and local labor market information;

(2) "Emerging occupation" means an occupation that arises from forces related to technological changes in the workplace and the work of which cannot be performed by workers from other occupations without customized education or training; and

(3) "Existing employer," when used in reference to an employer's eligibility for a Tennessee job skills grant, as described in this section, means an employer that has been liable to pay unemployment insurance premiums under this chapter for more than one (1) year.

#### **50-7-807. Report concerning findings and recommendations.**

On or before January 1, 2014, the department shall report to the commerce and labor committee of the senate and the business and utilities committee of the house of representatives concerning the department's findings and recommendations concerning the Tennessee works pilot program.

#### **50-9-102. Applicability.**

Sections 50-9-103 — 50-9-111 apply to a drug-free workplace program implemented pursuant to rules adopted by the commissioner of labor and workforce development. The application of this chapter is subject to the provisions of any applicable collective bargaining agreement. Nothing in the program authorized by this chapter is intended to authorize any employer to test any applicant or employee for alcohol or drugs in any manner inconsistent with federal constitutional or statutory requirements, including those imposed by the Americans with Disabilities Act, compiled in 42 U.S.C. § 12101 et seq and the National Labor Relations Act, compiled in 29 U.S.C. § 151 et seq.

**53-8-111. Communicable diseases. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

(a) No employer shall require, permit or suffer any person to work, nor shall any person work in a building, room, basement, cellar or vehicle occupied or used for the production, preparation, manufacture, packing, storage, sale, distribution and transportation of food who is affected with a communicable disease that may be transmissible through food.

(b) All persons so employed shall procure a health certificate showing that the person is free from disease or diseases transmissible through food.

(c) The certificate shall be signed by a physician licensed to practice in this state.

(d) Before signing the certificate, the physician shall make examination and laboratory tests that in the physician's opinion are reasonable and necessary for the proper issuance of a food-handler's health certificate, and the tests that are given shall be set out on the certificate by the physician.

(e) Diseases designated in regulations promulgated under the authority of and by the department of health as transmissible through food shall be applicable under this section.

(f) Local boards of health and local health officers are empowered to enforce this section.

**53-8-111. Communicable diseases. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

*(a) No employer shall require, permit or suffer any person to work, nor shall any person work in a building, room, basement, cellar or vehicle occupied or used for the production, preparation, manufacture, packing, storage, sale, distribution and transportation of food who is affected with a communicable disease that may be transmissible through food.*

*(b) [Deleted by 2013 amendment, effective July 1, 2015.]*

*(c) [Deleted by 2013 amendment, effective July 1, 2015.]*

*(d) [Deleted by 2013 amendment, effective July 1, 2015.]*

*(e) [Deleted by 2013 amendment, effective July 1, 2015.]*

*(f) [Deleted by 2013 amendment, effective July 1, 2015.]*

**53-8-201. Short title. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

This part shall be known and may be cited as the "Retail Food Store Inspection Act of 1986."

**53-8-202. Legislative intent. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

The intent of this part is to eliminate duplicate inspections of retail food stores.

**53-8-203. Part definitions. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

As used in this part, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of agriculture or the commissioner's duly authorized agents;

- (2) "Department" means the department of agriculture;
- (3)(A)(i) "Food service establishment" means any establishment, place or location, whether permanent, temporary, seasonal or itinerant, where food is prepared and the public is offered to be served, or is served, food, including, but not limited to, foods, vegetables, or beverages not in an original package or container, food and beverages dispensed at soda fountains and delicatessens, sliced watermelon, ice balls, or water mixtures;
  - (ii) "Food service establishment" includes places listed in subdivision (3)(A)(i), regardless of whether there is a charge for the food;
- (B) "Food service establishment" does not include:
  - (i) Private homes where food is prepared or served and not offered for sale, retail food store operations other than delicatessens, the location of vending machines, and supply vehicles;
  - (ii) Any establishment, place or location listed in subdivision (3)(B)(i), whether permanent, temporary, seasonal or itinerant that is located west of the Ben Brown Bridge and east of the Lascassas School in Lascassas;
  - (iii) Grocery stores that may, incidentally, make infrequent casual sales of uncooked foods for consumption on the premises, or any establishment whose primary business is other than food service, that may, incidentally, make infrequent casual sales of coffee or prepackaged foods, or both, for consumption on the premises. "Infrequent casual sales" means sales not in excess of fifty dollars (\$50.00) per day on any particular day, for the purposes of this subdivision (3)(B); or
  - (iv) A catering business that employs no regular, full-time employees, the food preparation for the business is solely performed within the confines of the principal residence of the proprietor, and the catering business makes only "occasional sales" during any thirty-day period;
- (4) "Imminent health hazard" means any condition, deficiency or practice that, if not corrected, is very likely to result in illness, injury or loss of life to any person;
- (5) "Person" means any individual, partnership, firm, corporation, agency, municipality, state or political subdivision, or the federal government and its agencies and departments;
- (6) "Potentially hazardous food" means any food that consists, in whole or in part, of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients in a form capable of supporting rapid and progressive growth of infections or toxigenic microorganisms; and
- (7)(A) "Retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premise consumption;
  - (B) "Retail food store" does not include:
    - (i) Establishments that handle only prepackaged, nonpotentially hazardous foods;
    - (ii) Roadside markets that offer only fresh fruits and fresh vegetables;
    - (iii) Food and beverage vending machines or food service establishments not located within a retail food store; or
    - (iv) A person who makes infrequent casual sales of honey or who packs or sells less than one hundred fifty gallons (150 gals.) of honey per year.

**53-8-204. Applicability of part. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

Food service establishments that are located within retail food stores are subject to this part and exempt from regulation and inspection under the Hotel, Food Service Establishment and Public Swimming Pool Inspection Act, compiled in title 68, chapter 14, part 3.

**53-8-205. Authority and duties of commissioner. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

The commissioner is authorized to:

- (1) Carry out or cause to be carried out all provisions of this part;
- (2) Collect all fees provided for in this part and apply the collected fees in accordance with the procedures of the department of finance and administration to the necessary and incidental costs of administration of this part. Nothing in this part shall be construed to prohibit the department from receiving by way of general appropriation sums that may be required to fund adequately the implementation of this part, as recommended in the annual budget by the governor to the general assembly;
- (3) Prescribe rules and regulations governing the alteration, construction, sanitation, safety and operation of retail food stores or food service establishments located with a retail food store that may be necessary to protect the health and safety of the public, and require every retail food store or food service establishment located with a retail food store to comply with these rules and regulations; provided, that the commissioner shall not prescribe rules and regulations in conflict with the minimum statewide building construction standards established by the state fire marshal pursuant to § 68-120-101;
- (4)(A) Inspect or cause to be inspected at least once every six (6) months, and as often as the commissioner deems necessary, every retail food store in the state to determine compliance with this part and rules and regulations;
- (B) Inspect or cause to be inspected at least once every six (6) months, and as often as the commissioner deems necessary, every food service establishment located within a retail food store in the state to determine compliance with this part and rules and regulations;
- (5) Issue or cause to be issued, suspend and revoke permits to operate retail food stores as provided in this part;
- (6) Notify the owner, proprietor or agent in charge of any retail food store of changes or alterations that may be necessary to effect complete compliance with this part and rules and regulations governing the construction, alteration and operation of the facility or facilities, and to close the facility or facilities for failure to comply within specified times as provided in this part and rules and regulations; and
- (7)(A) In order to prevent duplication in the major metro areas of Shelby, Madison, Davidson and Knox counties, the commissioner shall contract the inspection and enforcement program pursuant to this part, and shall allow the contracted county health department to collect and retain the permit fees collected for retail food stores that have been permitted by those county health departments; and

(B) Enter into an agreement or contract with county health departments whereby these departments would implement this part or its equivalent in their respective areas of jurisdiction, if the commissioner deems it to be appropriate; provided, that the following conditions shall apply:

- (i) State reporting requirements must be met by the county health department or departments;
- (ii) The county health department program standards must be at least as stringent as those of the state law and regulations;
- (iii) The commissioner shall retain the right to exercise oversight and evaluation of performance of the county health department or departments and to terminate the agreement or contract for cause immediately, or otherwise upon reasonable notice;
- (iv) The commissioner may set other fiscal, administrative or program requirements that the commissioner deems necessary to maintain consistency and integrity of the statewide program; and
- (v) Staffing and resources shall be adequate to implement and enforce the program in the local jurisdiction.

**53-8-206. Disposition of funds. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

(a) All moneys coming into the state treasury under this part from permit fees, fines and penalties shall be appropriated to the department for the payment of necessary expenses incident to the administration of this part.

(b) Any unexpended balance of the fund in any fiscal year shall revert to the general fund.

**53-8-207. Permits — Required — Expiration — Transferal — Posting. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

(a) No person shall operate a retail food store without holding a valid permit issued to the person by the commissioner on or before July 1 of each year.

(b) Every person now engaged in the business of operating a retail food store, and every person who shall thereafter engage in retail food store business, shall procure a permit from the commissioner for each retail food store so operated or proposed to be operated.

(c) Each permit shall expire on June 30 next following its issuance.

(d) No permit shall be transferred from one (1) location or individual to another.

(e) Permits shall be posted in a conspicuous manner.

**53-8-208. Permits — Application, issuance and renewal. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

(a) Any person planning to operate a retail food store shall make written application for a permit on forms provided by the commissioner. Applications shall be completed and returned to the commissioner with the proper permit fee.

(b) Prior to approval of the application for a permit, the commissioner shall inspect the proposed facility to determine compliance with the requirements of

this part and rules and regulations. The commissioner shall issue a permit to the applicant, if the inspection reveals that the facility is in compliance with the requirements of this part and rules and regulations.

(c) Applications for renewal of permits for existing retail food stores will be mailed to the operators prior to July 1 of each year. When completed applications and the proper permit fees are returned, the commissioner shall issue new permits to applicants.

**53-8-209. Permits — Suspension. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

(a) The commissioner has the authority to suspend any permit to operate a retail food store issued pursuant to this part, if the commissioner has reasonable cause to believe that the permittee is not in compliance with this part; provided, that the permittee shall be given opportunity to correct violations as provided in § 53-8-217.

(b) Suspension of permits shall be of two (2) types, one (1) with opportunity for a hearing prior to the effective time, and one (1) to be effective immediately with opportunity for a hearing afterward.

(c) Notice of either type of suspension may be given by the inspector on the inspector's regular inspection form or by letter from the commissioner.

(d) When a permit suspension is effective, all operations must cease.

(e) Suspensions to be effective immediately upon receipt of notice prior to any hearing may only be made if an imminent health hazard exists.

(f) A written request for a hearing on either type of suspension shall be filed by the permittee within ten (10) days of receipt of notice. This ten-day period may run concurrently with the ten-day period set forth in § 53-8-217(a)(2).

(g) If a hearing is requested, it shall be commenced within a reasonable time of the request. If no request for a hearing is made within ten (10) days of receipt of notice, the suspension becomes final and not subject to review.

(h) The commissioner may end the suspension at any time if reasons for suspension no longer exist.

**53-8-210. Permits — Revocation. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

(a) The commissioner may, after providing opportunity for hearing, revoke a permit for serious or repeated violations of the requirements of this part or for interference with the commissioner in the performance of the commissioner's duty.

(b) Prior to revocation, the commissioner shall notify, in writing, the permittee of the specific reason or reasons for which the permit is to be revoked, and that the permit shall be revoked at the end of ten (10) days following service of the notice, unless a written request for a hearing is filed with the commissioner within the ten-day period. If no request for a hearing is filed within the ten-day period, the revocation of the permit becomes final.

**53-8-211. Notice — Service — Copy. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

(a) A notice provided for in this part is properly served when it is delivered to the permittee or person in charge, or when it is sent by certified mail, return

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receipt requested, to the last known address of the permittee.

(b) A copy of the notice shall be filed in the records of the commissioner.

**53-8-212. Hearings — Appeals. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

(a) The hearings provided for in this part shall be conducted by the commissioner in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) Appeals from any final decision after a hearing shall be pursued in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) Subsections (a) and (b) do not apply in a county where the health department is operating a program under § 53-8-205(7) that meets the minimum requirements of due process; provided, that appeals from final decisions made under those programs may be made to the commissioner, for the limited purpose of determining whether a material error of law was made at the county level. The appeal to the commissioner shall not be de novo, but shall be limited to a review of the record of the hearing at the county level.

**53-8-213. Application after revocation. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

Whenever revocation of a permit becomes final, the holder of the revoked permit may make written application for a new permit.

**53-8-214. Permit fees for retail food stores. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

(a) The permit fee to operate a retail food store in this state shall be in accordance with the following schedule:

(1) Retail food stores that contain within the premises a food service establishment that prepares potentially hazardous food shall pay a permit fee in accordance with the following schedule:

No. of Seats	
0-50	\$210.00
51 and over	\$360.00

(2) Retail food stores that contain within the premises a food service establishment that offers self-service foods and does not prepare potentially hazardous foods shall pay a permit fee of thirty-five dollars (\$35.00); and

(3) In addition to the fees in subdivision (a)(1) or (a)(2), all retail food stores shall pay an annual permit fee of fifty dollars (\$50.00).

(b) If the permit fee is delinquent for more than thirty (30) calendar days, a penalty of one half (½) the permit fee shall be added to the fee. If a check is returned for any reason, a penalty of one half (½) the permit fee shall be added to the fee.

(c) The permit fee, plus any penalty, shall be paid to the commissioner before a permit is issued, and the permit shall be kept and displayed in a conspicuous manner, properly framed, in the food service establishment for which it is issued.

**53-8-215. Fractional permit fees. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

When application is made for a permit to operate any retail food store after January 1 of any year, the fee charged for the permit shall be one half ( $\frac{1}{2}$ ) the annual rate; however, where the retail food store was subject to permit requirements prior to January 1 of any year, no fractional rate shall be allowed.

**53-8-216. Inspections, reporting and scoring. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

(a) Inspection results for retail food stores shall be recorded on standard departmental forms that summarize the requirements of the law and rules and regulations.

(b) The scoring system shall include a weighted point value for each requirement in which critical requirements are assigned values of four (4) and five (5) points with less critical items having assigned values of one (1) and two (2) points.

(c) The rating score of the facility or facilities shall be the total of the weighted point values for all violations subtracted from one hundred (100).

(d) A copy of the completed inspection report shall be furnished to the person in charge of the facility at the conclusion of the inspection.

(e) The most current inspection report furnished to the operator or person in charge of the establishment shall be kept available at the facility for public disclosure to any person who requests to review it.

**53-8-217. Violation correction. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

(a) The completed inspection report shall specify a reasonable period of time for correction of violations found. Correction of violations shall be accomplished within the period specified in accordance with the following:

(1) If an imminent health hazard exists, such as complete lack of refrigeration, sewage back-up into the facility, contaminated water supply, or inability to sanitize dishes and silverware, the facility shall immediately cease operations until authorized to reopen by the commissioner;

(2) All violations of critical items, those items assigned values of four (4) and five (5) points, shall be corrected as soon as possible and in any event within ten (10) days following inspection. Within fifteen (15) days after inspection, the permittee shall notify the commissioner stating that critical item violations have been corrected. A follow-up inspection may be made for confirmation;

(3) All other items should be corrected as soon as possible, but in any event by the time of the next routine inspection; and

(4) When the overall rating score of any facility is less than seventy (70) on forms prepared pursuant to § 53-8-216, the facility shall initiate corrective action on all identified violations within forty-eight (48) hours. One (1) or more inspections shall be conducted at reasonable intervals to assure correction.

(b) The inspection report shall state that failure to comply with any time limits specified by the commissioner for correction may result in cessation of

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operations. An opportunity for a hearing on the ordered corrective action shall be provided if a written request is filed with the commissioner within ten (10) days following cessation of operations. If a request for a hearing is received, a hearing shall be held within a reasonable time after receipt of the request.

(c) Whenever a facility is required under this section to cease operations, it shall not resume operations until it is shown on reinspection that conditions responsible for the order to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time.

**53-8-218. Examination and condemnation of food. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

(a) Food may be examined or sampled by the commissioner as deemed necessary for the enforcement of this part.

(b) The commissioner may, upon written notice to the operator specifying particular reasons, place a hold order on any food that the commissioner believes is in violation of this part or rules or regulations.

(c) The commissioner shall tag, label or otherwise identify any food subject to a hold order.

(d) No food subject to a hold order shall be used, served or moved from the establishment.

(e) The hold order may state that the food be held while confirmation is obtained that the condition violates this part or rules or regulations.

(f) The hold order may also order the operator to destroy food that violates this part or rules or regulations.

(g) The commissioner shall permit storage of the food under the conditions specified in the hold order, unless storage is not possible without risk to the health of the public, in which case immediate destruction shall be ordered and accomplished.

(h) The hold order shall state that a request for a hearing may be filed within ten (10) days.

(i) If a request for a hearing is received, the hearing shall be held within a reasonable time after receipt of the request.

(j) On the basis of evidence produced at the hearing, the hold order may be rescinded, or the owner or person in charge may be directed by written order to denature or destroy the food or to bring it into compliance with this part.

**53-8-219. Review and approval of plans and specifications. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

(a) Whenever a retail food store is constructed, extensively remodeled and whenever an existing structure is converted to use as a retail food store, plans and specifications shall be submitted to the commissioner for review and approval before construction, remodeling or conversion is begun.

(b) The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, and construction materials and work areas, and the type and model of proposed fixed equipment and facilities.

(c) The commissioner shall approve the plans and specifications if they meet the requirement of this part and rules and regulations.

(d) No retail food store shall be constructed, extensively remodeled or converted, except in accordance with plans and specifications approved by the commissioner.

**53-8-220. Employee health. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

When the commissioner has reasonable cause to suspect possible disease transmission by an employee of a facility, the commissioner may secure a morbidity history of the employee or make other investigations as may be indicated. The commissioner may require any of the following:

- (1) The immediate exclusion of the employee from employment in the retail food store;
- (2) The immediate closing of the facility until, in the commissioner's opinion, no further danger of disease outbreak exists;
- (3) Restriction of the employee's service to some area of the facility where there would be little likelihood of transmitting disease; or
- (4) Adequate medical and laboratory examinations of the employee and of other employees.

**53-8-221. Penalties. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

(a) Any person operating a retail food store who fails or refuses to comply with this part or rules and regulations, or obstructs or hinders the regulatory authority in the discharge of the authority's duties, or otherwise operates a retail food store in violation of this part or rules and regulations commits a Class C misdemeanor for each offense.

(b) Each day's violation, after sufficient notice has been given, constitutes a separate offense.

**53-8-222. Injunctions. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

When the commissioner has reason to believe that a person has caused, is causing, or is about to cause a violation of this part or the rules and regulations promulgated under this part, the commissioner may initiate proceedings in either the chancery court of Davidson County or the chancery court of the county where the violation is occurring for injunctive relief to prevent the continuance of the violation or to correct the conditions resulting in, or about to result in, the violation.

**53-8-201. Short title. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

*This part shall be known as the "Tennessee Retail Food Safety Act."*

**53-8-202. Purpose. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

*It is the purpose of this part to ensure that foods offered for public consumption in Tennessee are safe as prepared, processed, served, packaged, and delivered. Food service establishments that are located within retail food stores are subject to this part and exempt from regulation in accordance with title 68, chapter 14, part 7.*

**53-8-203. Part definitions. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

*As used in this part:*

(1) *“Alteration” shall be defined by rule, but shall not mean function replacement that equals or makes better the existing operation of the facility;*

(2) *“Commissioner” means the commissioner of agriculture, the commissioner’s duly authorized representative, and in the event of the commissioner’s absence or vacancy in the office of commissioner, the deputy commissioner;*

(3)(A) *“Demonstration of knowledge” means the ability to demonstrate knowledge of food safety principles as applicable to establishments regulated in accordance with this part;*

(B) *For the purposes of this part, “demonstration of knowledge” may be accomplished by one (1) or more of the following means:*

(i) *Completing an inspection that reflects no priority item violation;*

(ii) *Employing at least one (1) person certified as a food protection manager who has shown proficiency of food protection information through passing a test that is part of a certification program that is evaluated and listed by an accrediting agency recognized by the Conference for Food Protection as conforming to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Programs; or*

(iii) *Responding correctly to food protection questions related to the specific food operation. A person responding to the questions may be aided by the utilization of food safety procedures posted prominently for employees who may use the procedures as reference guides. The commissioner shall assist establishments that request information relative to risks associated with the establishments’ specific food operation, which may be posed as questions during the inspection;*

(4) *“Department” means the department of agriculture;*

(5) *“Employee” means a person:*

(A) *In charge of a food establishment;*

(B) *Engaged in the preparation of food or drink;*

(C) *Engaged in service of food to the establishment’s clientele; or*

(D) *Engaged in ware washing;*

(6) *“Extensive remodeling” means the repair, construction, alteration or installation of new equipment, modification of existing equipment or fixtures, changes in floor plan layout, addition of new processes, expansion to new space, or significant changes to use of space or equipment;*

(7) *“Food Code” means the 2009 Food Code as published by the United States department of health and human services, public health service, food and drug administration;*

(8)(A) *“Food establishments” means retail food stores, and food service establishments located within retail food stores;*

(B) *The term “food establishments” is to be used throughout this part when a provision is applicable to both retail food stores and food service establishments located within retail food stores;*

(9)(A) *“Food service establishment” means any establishment, place or location, whether permanent, temporary, seasonal, or itinerant, where food is prepared and the public is offered to be served or is served food, including, but not limited to, foods, vegetables, or beverages not in an original package or container, food and beverages dispensed at soda fountains and delicatessens, sliced watermelon, ice balls, or water*

*mixtures;*

(B) *“Food service establishment” includes places identified in subdivision (9)(A), regardless of whether there is a charge for the food;*

(C) *“Food service establishment” does not include private homes where food is prepared or served and not offered for sale, retail food store operations other than delicatessens, the location of vending machines or supply vehicles;*

(D) *“Food service establishment” does not include churches, temples, synagogues or other religious institutions, civic, fraternal, or veteran’s organizations where food is prepared, served, transported, or stored by volunteer personnel only on non-consecutive days; provided, however, that the storage of unopened, commercially canned food, packaged bulk food that is not potentially hazardous as defined by department rules and regulations, and dry goods shall not apply for these purposes;*

(E) *“Food service establishment” does not include grocery stores that may, incidentally, make infrequent casual sales of uncooked foods for consumption on the premises, or any establishment whose primary business is other than food service, that may, incidentally, make infrequent casual sales of coffee or prepackaged foods, or both, for consumption on the premises. For the purposes of this subdivision (9)(E), “infrequent casual sales” means sales not in excess of one hundred fifty dollars (\$150) per day on any particular day;*

(F) *“Food service establishment” does not include a location from which casual, occasional food sales are conducted solely in connection with youth-related amateur athletic or recreational activities or primary or secondary school-related clubs by volunteer personnel and that are in operation for twenty-four (24) consecutive hours or less;*

(G) *“Food service establishment” does not include a catering business that employs no regular, full-time employees, the food preparation for such business is solely performed within the confines of the principal residence of the proprietor, and the catering business makes only “occasional sales” during any thirty-day period; and*

(H) *“Food service establishment” does not include a house or other residential structure where seriously ill or injured children and their families are provided temporary accommodations in proximity to their treatment hospitals and where food is prepared, served, transported or stored by volunteer personnel; provided, that the house or structure is supported by a § 501(c)(3) organization, as defined in 26 U.S.C. § 501(c)(3), that has as a component of its mission the support of programs that directly improve the health and well-being of children;*

(10) *“Imminent health hazard” means any condition, deficiency, or practice that, if not corrected, is very likely to result in illness, injury, or loss of life to any person;*

(11) *“Person” means any individual, partnership, firm, corporation, agency, municipality, state or political subdivision, or the federal government and its agencies and departments;*

(12) *“Person in charge” means an individual present at a food establishment who is responsible for the operation at the time of inspection. A “person in charge” shall be present at the establishment during food preparation and handling, and may put instructions in place for cleaning and preparing the establishment prior to the preparation of any food or beverage; and*

(13)(A) *“Retail food store” means any establishment or a section of an establishment where food and food products are offered to the consumer and intended for off-premise consumption;*

(B) *“Retail food store” does not include:*

(i) *Establishments that handle only prepackaged, non-potentially hazardous foods, as defined by department rules and regulations;*

(ii) *Roadside markets that offer only fresh fruits and fresh vegetables;*

(iii) *Food and beverage vending machines; .*

(iv) *Food service establishments not located within a retail food store;*

*or*

(v) *A person who makes infrequent casual sales of honey or who packs or sells less than one hundred fifty gallons (150 gals.) of honey per year.*

**53-8-204. Authority of commissioner. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

*The commissioner is authorized to:*

(1) *Carry out or cause to be carried out all provisions of this part;*

(2) *Collect all fees established pursuant to this part and apply the fees in accordance with the procedures of the department of finance and administration to the necessary and incidental costs of the administration of this part. Nothing in this subdivision (2) shall be construed to prohibit the department from receiving, by way of general appropriation, such sums as may be required to fund adequately the implementation of this part, as recommended in the annual budget by the governor to the general assembly;*

(3) *Prescribe rules and regulations, including emergency rules, governing the alteration, construction, sanitation, safety of food, and operation of food establishments as may be necessary to protect the health and safety of the public, and require food establishments to comply with these rules and regulations. A non-elected body of any municipality, county, or metropolitan government shall not enact any ordinance or issue any rule or regulation pertaining to food safety or the provision of nutritional information related to food or drink, or otherwise regulate menus at food establishments. If, on July 1, 2015, the federal government takes action regarding the provision of food nutritional information at food establishments, and the federal action specifically authorizes state agencies to enforce such action, then the department of agriculture shall be the department that is primarily responsible for the implementation and supervision of any new requirements and shall have the authority to promulgate rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as necessary to effectuate the purposes of such requirements. The commissioner shall not prescribe any such rules and regulations that are in conflict with the minimum statewide building construction standards established by the state fire marshal pursuant to § 68-120-101. The rules with respect to food temperature shall be specific with respect to the types of food prepared and the risks presented by those foods. Except as specifically provided herein, the commissioner may, by the promulgation of rules and regulations, adopt all or part of the Food Code;*

(4) *Inspect or cause to be inspected as often as the commissioner, in the commissioner’s discretion may deem necessary, every food establishment in the state as authorized by this part, to determine compliance with this part*

*and with rules and regulations;*

*(5) Issue or cause to be issued, suspend, and revoke permits to operate food establishments as provided in this part;*

*(6) Notify the owner, proprietor, or agent of any food establishment of such changes or alterations as may be necessary, to effect complete compliance with this part and with rules and regulations governing the construction, alteration, and operation of the facilities, and close the facilities for failure to comply within specified times as provided in this part and in rules and regulations;*

*(7) Enter into agreements or contracts with the Shelby, Davidson, and Knox county health departments for the health departments to implement this part in their areas of jurisdiction, if the commissioner deems it appropriate; provided, that the following conditions shall apply:*

*(A) State reporting requirements shall be met by the county health department or departments;*

*(B) The county health department program standards shall be identical to those of the state law, and to rules and regulations;*

*(C) The commissioner shall retain the right to exercise oversight and evaluation of performance of the county health department or departments and terminate the agreement or contract for cause immediately, or otherwise upon reasonable notice;*

*(D) The commissioner may set such other fiscal, administrative, or program requirements as the commissioner deems necessary to maintain consistency and integrity of the statewide program;*

*(E) Staffing and resources shall be adequate to implement and enforce the program in the local jurisdiction;*

*(F) Contract county health departments that collect the applicable permit fees from food establishments located within the county shall retain one hundred percent (100%) of the permit fees and penalty fees. Contract counties that utilize the services of the department for the collection of permit fees shall receive ninety-five percent (95%) of permit fees collected within a contract county pursuant to §§ 53-8-204 — 53-8-206. This amount shall be calculated based upon fees collected in the contract county during the state's fiscal year multiplied by ninety-five percent (95%);*

*(8)(A) Upon the application of a food establishment for a variance based on a showing of good cause and an affirmative demonstration that the risks to the public attendant to the limited activities have been mitigated, the commissioner shall grant the establishment a variance from the limitations in the Food Code regarding restrictions pertaining to bare hand contact. A request for a variance shall be granted or denied within sixty (60) days of the commissioner's receipt of the application for variance. A request for a variance shall include the following:*

*(i) A listing of the specific ready-to-eat foods that are touched by bare hands;*

*(ii) Diagrams and other information showing that hand washing facilities are located and equipped as prescribed by the applicable provisions of the Food Code;*

*(iii) An employee health policy documenting that the food service establishment complies with:*

*(a) The person in charge requirements; and*

*(b) Requirements for monitoring the health of food service*

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*employees;*

*(iv) Documentation that food service employees have received training on the:*

*(a) Risks of contacting ready-to-eat foods with bare hands;*

*(b) Practice of proper hand washing;*

*(c) Proper fingernail maintenance;*

*(d) Prohibition on jewelry; and*

*(e) Good hygienic practices;*

*(v) Documentation that food employees contacting ready-to-eat foods with bare hands used two (2) or more of the following control measures:*

*(a) Double hand washing;*

*(b) Nail brushes;*

*(c) A hand antiseptic after hand washing;*

*(d) Incentive programs that assist or encourage food service employees not to work when they are ill; or*

*(e) Other control measures approved by the commissioner.*

*(B) Notwithstanding any provisions of the Food Code to the contrary, the commissioner shall not require any further documentation for the granting of a variance other than those contained in this section.*

**53-8-205. Appropriation of moneys. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

*All moneys coming into the state treasury pursuant to this part from fees, fines, and penalties shall be appropriated to the department for the payment of necessary expenses incident to the administration of this part, as determined by the commissioner. Any unexpended balance of the fund in any fiscal year shall be retained by the department to be used to provide or expand training for food service operators and the department's food safety staff.*

**53-8-206. Permits — Expiration — Transfer not allowed — Display. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

*(a) No person shall operate a food establishment who does not hold a valid permit issued to the person by the commissioner on or before July 1 of each year, or as the commissioner may otherwise provide by rule and regulation.*

*(b) Every person now engaged in the business of operating a food establishment, and every person who, on July 1, 2015, engages in such a business, shall procure a permit from the commissioner for each food establishment so operated or proposed to be operated.*

*(c) Each permit for food establishments shall expire on June 30 following its issuance or as the commissioner may otherwise provide by rule and regulation.*

*(d) No permit shall be transferred from one (1) location or person to another.*

*(e) The permit shall be kept and displayed in a conspicuous manner, and visible to the public in the food establishment for which it is issued.*

**53-8-207. Application for permits — Inspection — Renewals. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

*(a) Any person planning to operate a food establishment shall first submit an application for a permit on forms provided by the commissioner. The application shall be completed and submitted to the commissioner with the proper*

permit fee.

(b) Prior to the approval of the application for a permit, the commissioner shall inspect the proposed facility to determine if the person applying for the permit is in compliance with the requirements of this part and with applicable rules and regulations. The commissioner shall issue a permit to the applicant if the inspection reveals that the facility is in compliance with such requirements.

(c) Applications for renewal of permits for existing food establishments will be issued to the operators prior to the expiration date of the permit. When completed applications and the proper permit fees are returned to the commissioner, the commissioner shall issue new permits to applicants.

**53-8-208. Suspension of permits. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

(a) The commissioner has the authority to suspend any permit to operate a food establishment issued pursuant to this part if the commissioner has reasonable cause to believe that the permittee is not in compliance with this part; provided, that the permittee shall be given the opportunity to correct violations as provided in § 53-8-215.

(b) Suspension of permits, other than those for temporary food service establishments, shall be of the following two (2) types:

(1) A Class 1 suspension, which provides an opportunity for a hearing prior to the effective date of the suspension; and

(2) A Class 2 suspension, which provides an opportunity for a hearing after the effective date of the suspension and is effective immediately.

(c) Notice of either type of suspension may be given by the inspector on the inspector's regular inspection form or by written notification from the commissioner. When a permit suspension is effective, all food establishment operations shall cease. Class 2 suspensions shall only be issued if an imminent health hazard exists.

(d) A written request for a hearing on either type of suspension shall be filed by the permittee within ten (10) days of the receipt of notice. This ten-day period may run concurrently with the ten-day period set forth in § 53-8-215. If a hearing is requested, it shall be commenced within a reasonable time of the request. If no request for a hearing is made within ten (10) days of receipt of notice, the suspension becomes final and is not subject to review.

(e) The commissioner may end the suspension at any time if the reasons for the suspension no longer exist.

**53-8-209. Revocation of permits. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

(a) The commissioner may, after providing opportunity for a hearing, revoke a permit for serious or repeated violations of the requirements of this part or for interference with the commissioner in the performance of the commissioner's duty.

(b) Prior to revocation, the commissioner shall notify the permittee, in writing, of the specific reason or reasons for which the permit is being revoked at the end of ten (10) days following service of the notice, unless a written request for a hearing is filed with the commissioner within the ten-day period. If no request for a hearing is filed within the ten-day period, the revocation of the permit becomes final.

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**53-8-210. Service of notice. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

*A notice provided for in this part is properly served when it is delivered to the permittee or person in charge, or when it is sent by certified mail, return receipt requested, to the last known address of the permittee. A copy of the notice shall be filed in the records of the commissioner.*

**53-8-211. Hearings — Appeals. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

*(a) The hearings provided for in this part shall be conducted by the commissioner in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.*

*(b) Appeals from any final decision after a hearing shall be pursued in accordance with the Uniform Administrative Procedures Act.*

*(c) Subsections (a) and (b) shall not apply in a county where the health department is operating a program pursuant to § 53-8-204(7) that meets the minimum requirements of due process; provided, that appeals from final decisions made under such programs may be made to the commissioner, for the limited purpose of determining whether a material error of law was made at the county level. The appeal to the commissioner shall not be de novo, but shall be limited to a review of the record of the hearing at the county level.*

**53-8-212. Application for permit after revocation. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

*Whenever revocation of a permit becomes final, upon demonstration that the conditions which led to the revocation have been cured, the holder of the revoked permit may make written application for a new permit.*

**53-8-213. Permit fees. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

*(a) The permit fee to operate a food establishment shall be in accordance with the following schedule:*

*(1) Retail food stores that contain within the premises a food service establishment that prepares potentially hazardous food, as defined by department rules and regulations, shall pay a permit fee as follows:*

<u>No. of Seats</u>	<u>Fee Amount</u>
0-50	\$210
51 or more seats	\$360

*(2) Retail food stores that contain within the premises a food service establishment that offers self-service foods and does not prepare potentially hazardous foods, as defined by department rules and regulations, shall pay a permit fee of thirty-five dollars (\$35.00); and*

*(3) In addition to the fees in subdivision (a)(1) or (a)(2), all retail food stores shall pay an annual permit fee of fifty dollars (\$50.00).*

*(b) If the permit fee is delinquent for more than thirty (30) calendar days, a penalty fee of one half (½) the permit fee shall be assessed, in addition to the permit fee. If a check is returned for any reason, a penalty fee of one half (½) the permit fee shall be assessed, in addition to the permit fee. The permit fee, plus*

*any penalty fee, must be paid before the permit is issued.*

*(c) When application is made for a permit to operate any food establishment after January 1 of any year, or such other date as the commissioner may establish by regulation, the fee charged for the permit shall be one half (½) the annual rate; provided, however, that where the establishment was subject to permit requirements prior to January 1 or such other date as the commissioner may establish by rule and regulation, of any year, no such fractional rate shall be allowed.*

**53-8-214. Inspection reports. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

*(a) Inspection results for food establishments shall be recorded on standard departmental forms that summarize the requirements of the law and rules and regulations.*

*(b) A copy of the completed inspection report shall be furnished to the person in charge of the facility at the conclusion of the inspection.*

*(c) The most current inspection report furnished to the operator or person in charge of the establishment shall be made available at the facility for public disclosure to any person who requests to review it.*

**53-8-215. Correction of violations. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

*(a) The completed inspection report shall specify a reasonable period of time for correction of violations found.*

*(b) Corrections of violations shall be accomplished within the period specified in accordance with the following:*

*(1) If an imminent health hazard exists, the facility shall immediately cease operations until authorized to reopen by the commissioner;*

*(2) All violations of priority items shall be corrected as soon as possible and in any event within ten (10) days following inspection. Within fifteen (15) days after inspection, the permittee shall notify the commissioner stating that priority item violations have been corrected. A follow-up inspection may be made for confirmation;*

*(3) All other items shall be corrected as soon as possible, but no later than the time of the next routine inspection.*

*(c) The inspection report shall state that failure to comply with any time limits specified by the commissioner for correction may result in cessation of operations. An opportunity for a hearing on the ordered corrective action shall be provided, if a written request is filed with the commissioner within ten (10) days following cessation of operations. If a request for a hearing is received, a hearing shall be held within a reasonable time after receipt of the request.*

*(d) Whenever a facility is required under this section to cease operations, it shall not resume operations until it has shown on reinspection that the conditions that led to the order to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time.*

**53-8-216. Examination of food — Hold orders. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

*Food may be examined or sampled by the commissioner as deemed necessary for the enforcement of this part. The commissioner may place a hold order on*

*any food that the commissioner believes is in violation of this part or rules and regulations, upon written notice to the operator specifying particular reasons for the hold order. The commissioner shall tag, label, or otherwise identify any food subject to a hold order. No food subject to a hold order shall be used, served, sold, or moved from the establishment. The hold order may state that the food be held while confirmation is obtained that the condition violates this part or rules and regulations. The hold order may also order the operator to destroy food that violates this part or rules and regulations. The commissioner shall permit storage of the food under the conditions specified in the hold order, unless storage is not possible without risk to the health of the public, in which case immediate destruction shall be ordered and accomplished. The hold order shall state that a request for a hearing may be filed within ten (10) days. If a request for a hearing is received, the hearing shall be held within a reasonable time after receipt of the request. On the basis of evidence produced at the hearing, the hold order may be rescinded, or the owner or person in charge may be directed by written order to denature or destroy such food or to bring it into compliance with this part.*

**53-8-217. Review and approval of plans and specifications. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

*Whenever a food establishment is constructed or extensively remodeled, and whenever an existing structure is converted to use as a food establishment, plans and specifications shall be submitted to the commissioner for review and approval before construction, remodeling, or conversion begins. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, construction materials and work areas, and the type and model of proposed fixed equipment and facilities. The commissioner shall approve the plans and specifications, if they meet the requirements of this part and rules and regulations. No food establishment shall be constructed, extensively remodeled or converted, except in accordance with plans and specifications approved by the commissioner. Any deviation from the submitted plans and specifications previously approved by the commissioner discovered during an inspection that would not compromise the safety of food products shall not delay the issuance of a permit to operate a food establishment.*

**53-8-218. Employee health. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

*(a) When the commissioner has reasonable cause to suspect possible disease transmission by an employee of the facility, the commissioner may secure information about any recent illness of the employee or make other investigations as may be indicated. The commissioner may require any of the following:*

- (1) The immediate exclusion of the employee from employment in the food establishment;*
- (2) The immediate closing of the facility until, in the commissioner's opinion, no further danger of disease outbreak exists;*
- (3) Restricting the employee's service to some area of the facility where there would be little likelihood of transmitting disease; or*
- (4) Adequate medical and laboratory examinations of the employee and of other employees.*

*(b) A person in charge, having been provided by the employee with written*

*documentation from a person who practices in a medical profession in accordance with title 63 that the employee has been diagnosed with a condition set forth in Chapter 2, § 2-201.11(B)(2) of the Food Code shall have an affirmative duty to notify the commissioner or the commissioner's designee. A person in charge shall not be required to obtain medical records from a prospective employee prior to hiring such individual as an employee.*

**53-8-219. Violations. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

*Any person operating a food establishment who fails or refuses to comply with any provision of this part or of rules and regulations, or obstructs or hinders the regulatory authority in the discharge of the regulatory authority's duties, or otherwise operates a food establishment in violation of this part or of rules and regulations commits a Class C misdemeanor. Each day of operation after notice of non-compliance of violation has been given and such violation has not been corrected constitutes a separate offense.*

**53-8-220. Injunctive relief. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

*When the commissioner has reason to believe that a person is causing, is about to cause, or has caused a violation of this part or of the rules and regulations promulgated under this part, the commissioner may initiate proceedings in either the chancery court of Davidson County or the chancery court of the county where the violation is occurring, for injunctive relief to prevent the continuance of the violation or to correct the conditions resulting in, or about to result in, the violation.*

**53-8-221. Sale of food by children at public events. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

*Notwithstanding this part to the contrary, children eighteen (18) years of age or younger do not need a license or permit to sell bakery goods, homemade or otherwise, soft drinks, or other similar food commodities at public events.*

**53-10-112. Prevention of abuse of drugs dispensed by pharmacist.**

(a) For purposes of this section:

(1) "Pharmacist" has the same meaning as defined in § 63-10-204; and

(2) "Pharmacy" has the same meaning as defined in § 63-10-204.

(b) A pharmacy owner, manager or operator shall respect the professional judgment of the pharmacist in holding the health and safety of a patient to be their first consideration.

(c) A pharmacist shall, by utilizing education, skill, experience and professional judgment, make every reasonable effort to prevent the abuse of drugs which the pharmacist dispenses. In doing so, a pharmacist may decline to dispense to a patient a legend drug which in that pharmacist's professional judgment, lacks a therapeutic value for the patient or which is not for a legitimate medical purpose.

(d) A pharmacist shall not be subject to any penalty or fine when fulfilling the pharmacist's obligation to uphold the health and safety of a patient which results in the pharmacist declining to dispense any legend drug.

(e) It shall be a Class A misdemeanor, punishable by fine only, for the owner,

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manager or operator of a pharmacy to knowingly restrict or interfere with, or knowingly require a protocol or procedure that restricts or interferes with, a pharmacist's professional duty to counsel with patients and to evaluate the patients' appropriate pharmaceutical needs and the exercise of the pharmacist's professional judgment as to whether it is appropriate to dispense a legend drug to a patient.

**53-10-301. Short title. [Effective until July 1, 2016. See the version effective on July 1, 2016.]**

This part shall be known and may be cited as the "Tennessee Prescription Safety Act of 2012."

**53-10-302. Part definitions. [Effective until July 1, 2016. See the version effective on July 1, 2016.]**

As used in this part:

(1) "Board" means the board of pharmacy created by title 63, chapter 10, part 3;

(2) "Commissioner" means the commissioner of health;

(3) "Committee" means the controlled substance database committee created by this part;

(4) "Controlled substances" means a drug, substance or immediate precursor in Schedules I through VI defined or listed in the Tennessee Drug Control Act, compiled in title 39, chapter 17, part 4;

(5) "Database" means the controlled substance database created by this part;

(6) "Department" means the department of health;

(7) "Dispense" means to physically deliver a controlled substance covered by this part to any person, institution or entity with the intent that it be consumed away from the premises on which it is dispensed. It does not include the act of writing a prescription by a practitioner to be filled at a pharmacy licensed by the board. For purposes of this part, physical delivery includes mailing controlled substances into this state;

(8) "Dispenser" means a pharmacist, a pharmacy, or any healthcare practitioner who is licensed and has current authority to dispense controlled substances;

(9) "Healthcare practitioner" means:

(A) A physician, dentist, optometrist, veterinarian, or other person licensed, registered, or otherwise permitted to prescribe, distribute, dispense or administer a controlled substance in the course of professional practice; or

(B) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, or administer a controlled substance in the course of professional practice;

(10) "Healthcare practitioner extender" means any registered or licensed healthcare professional, and up to two (2) unlicensed persons per prescriber or dispenser designated by the prescriber or dispenser to act as agents of such prescriber or dispenser. A prescriber shall have the ability to authorize a healthcare practitioner extender to check the controlled substance database as stipulated in § 53-10-310(e) for other prescribers in the authorizing prescriber's practice. Notwithstanding § 28 of Chapter 880 of the Public

Acts of 2012, any one-time costs required to be made to effectuate this subdivision (10) specific to system modifications required by changes in this subdivision (10) shall be shared on a pro-rata basis, excluding the pharmacy board, by the appropriate prescribing boards as enumerated in this part. The prescriber or dispenser shall be responsible for actions taken by their agents pursuant to this part;

(11) "Law enforcement personnel" means agents of the Tennessee bureau of investigation, agents of a judicial district drug task force, federal law enforcement officers commissioned by a federal government entity, certified law enforcement officers certified pursuant to § 38-8-107, and certified law enforcement officers in other states;

(12) "Manufacturer" means any person, except a pharmacist compounding in the normal course of professional practice, engaged in the commercial production, preparation, propagation, conversion, or processing of a drug, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or both, and includes any packaging or repackaging of a drug or the labeling or relabeling of its container and the promotion and marketing of such drugs or devices;

(13) "Prescriber" means an individual licensed as a medical doctor, podiatrist, dentist, optometrist, veterinarian, osteopathic physician, or physician assistant who has the authority to issue prescriptions for controlled substances, or an advanced practice nurse with a certificate of fitness to prescribe and the required supervisory relationship with a physician; and

(14) "Wholesaler" means a person whose principal business is buying or otherwise acquiring drugs or devices for resale or distribution to persons other than consumers.

**53-10-303. Creation — Membership — Elections — Meetings — Per diem and travel reimbursement — Public meetings — Rules and regulations. [Effective until July 1, 2016. See the version effective on July 1, 2016.]**

(a) There is created the controlled substance database committee. The committee members shall be:

(1) The executive director of the board of pharmacy, who shall serve as database manager;

(2) The director of the department of health's division of health-related boards;

(3) The executive director of the board of medical examiners;

(4) One (1) of the governor-appointed and licensed members of each of the following health care professional licensure boards or committees to be chosen by the licensing board or committee:

(A) The board of medical examiners;

(B) The board of osteopathic examination;

(C) The board of dentistry;

(D) The board of registration in podiatry;

(E) The optometry board;

(F) The board of veterinary medical examiners;

(G) The board of nursing;

(H) The board of medical examiners' committee for physician assistants; and

(I) The board of pharmacy; and

(5) One (1) of the members of the board of pharmacy and one (1) of the members of the board of medical examiners who were appointed to those boards to represent the general public. The boards shall choose those representatives.

(b) The committee shall have a chair and vice chair, who shall be elected annually from its members.

(c) The committee shall meet at least annually and as often as deemed necessary either at the call of the chair or upon request of at least three (3) members of the committee. A quorum for purposes of official actions by the committee shall be seven (7) members.

(d) The members of the committee chosen to serve by the individual licensure boards and committees, while serving on this committee, shall be deemed to be performing official duties as members of their original board or committee and shall be entitled to the same per diem and travel reimbursements as they would receive for performing their duties for their original board or committee. The member's original board or committee shall pay those per diems and travel reimbursements.

(e) At all times, except when considering, reviewing, discussing, advising or taking action in reference to specifically named individuals or dispensers identified from information contained in, or reported to the database, the committee shall be subject to title 8, chapter 44, part 1, regarding public meetings.

(f) The commissioner shall have the authority to promulgate rules and regulations, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, necessary for implementation of this part. The commissioner shall promulgate rules regarding:

(1) Establishing, maintaining and operating the database;

(2) Access to the database and how access is obtained;

(3) Control and dissemination of data and information in the database;

and

(4) The sharing and dissemination of data and information in the database with other states or other entities acting on behalf of a state.

(g) The committee shall advise the commissioner of health with respect to any contemplated rulemaking under this part. The committee may make formal recommendations to the commissioner of health.

(h)(1) The committee shall have the duty to examine database information to identify unusual patterns of prescribing and dispensing controlled substances that appear to be higher than normal, taking into account the particular specialty, circumstances, patient-type or location of the prescriber or dispenser.

(2)(A) If the committee determines that a pharmacist or pharmacy has an unusually high pattern of dispensing controlled substances that is not explained by other factors, it shall refer the pharmacist or pharmacy to the chief board of pharmacy investigator.

(B) When the pharmacy investigator completes the investigation of any pharmacy or pharmacist referred to it by the committee pursuant to this subsection (h), the investigator shall report the results of the investigation back to the committee as follows:

(i) The investigator shall report that the investigation was dismissed if the results of the investigation indicate that the pharmacist or pharmacy had an unusually high dispensing pattern for explainable,

legitimate and lawful reasons; or

(ii) The investigator shall report that the investigation was referred to the pharmacy board if the results indicate that a prescriber has an unusually high pattern of prescribing or dispensing controlled substances that are not explained by other factors.

(C) If the action taken by the board indicates that the pharmacist or pharmacy had an unusually high dispensing pattern for explainable, legitimate and lawful reasons, the committee shall take that finding into consideration before it again refers the same pharmacist or pharmacy to the investigator based upon similar conduct.

(3)(A) If the committee determines that a prescriber has an unusually high pattern of prescribing or dispensing controlled substances that are not explained by other factors, it shall refer the prescriber to the health related boards' investigation unit.

(B) When the boards' investigator completes the investigation of any prescriber referred to it by the committee pursuant to this subsection (h), the investigator shall report the results of the investigation back to the committee as follows:

(i) The investigator shall report that the investigation was dismissed if the results of the investigation indicate that the prescriber had an unusually high dispensing pattern for explainable, legitimate and lawful reasons; or

(ii) The investigator shall report that the investigation was referred to the health related boards if the results indicate that a prescriber has an unusually high pattern of prescribing or dispensing controlled substances that are not explained by other factors.

(C) If the action taken by the board indicate that the prescriber had an unusually high dispensing or prescribing pattern for explainable, legitimate and lawful reasons, the committee shall take that finding into consideration before it again refers the same prescriber to the health related boards' investigation unit based upon similar conduct.

(4) If a pharmacy investigator or a member of the health related boards' investigation unit has reason to believe during any part of an investigation that a prescriber or dispenser is in violation of a criminal law, the investigator is authorized to report the conduct to the appropriate district attorney general.

**53-10-304. Administrative attachment — Controlled substance database — Data requirements. [Effective until July 1, 2016. See the version effective on July 1, 2016.]**

(a) There is created within the department a controlled substance database to be attached administratively and for purposes of staffing to the board of pharmacy. The executive director of the board shall be responsible for determining staffing.

(b) The board and the committee shall establish, administer, maintain and direct the functioning of the database in accordance with this part. The board, upon concurrence of the committee, may, under state procurement laws, contract with another state agency or private entity to establish, operate, or maintain the database. Additionally, the board, upon concurrence of the committee, shall determine whether to operate the database within the board or contract with another entity to operate the database, based on an analysis

of costs and benefits.

(c) The purpose of the database is to assist in research, statistical analysis, criminal investigations, enforcement of state or federal laws involving controlled substances, and the education of health care practitioners concerning patients who, by virtue of their conduct in acquiring controlled substances, may require counseling or intervention for substance abuse, by collecting and maintaining data as described in this part regarding all controlled substances in Schedules II, III and IV dispensed in this state, and Schedule V controlled substances identified by the controlled substance database advisory committee as demonstrating a potential for abuse.

(d) The data required by this part shall be submitted in compliance with this part to the database by any dispenser, or dispenser's agent, who dispenses a controlled substance contained in Schedules II, III, and IV, and Schedule V controlled substances identified by the controlled substance database committee as demonstrating a potential for abuse. The reporting requirement shall not apply for the following:

- (1) A drug administered directly to a patient;
- (2) Any drug sample dispensed;
- (3) Any drug dispensed by a licensed veterinarian; provided, that the quantity dispensed is limited to an amount adequate to treat the non-human patient for a maximum of forty-eight (48) hours;
- (4) Any facility that is registered by the United States drug enforcement administration as a narcotic treatment program and is subject to the recordkeeping provisions of 21 CFR 1304.24; or
- (5) Any drug dispensed by a licensed healthcare facility; provided, that the quantity dispensed is limited to an amount that is adequate to treat the patient for a maximum of forty-eight (48) hours.

**53-10-305. Submission of information — Data format. [Effective until July 1, 2016. See the version effective on July 1, 2016.]**

(a) All prescribers with DEA numbers who prescribe controlled substances and dispensers in practice providing direct care to patients in Tennessee for more than fifteen (15) calendar days per year shall be registered in the controlled substance database. New licensees shall have up to thirty (30) calendar days after notification of licensure to register in the database. Licensed veterinarians who never prescribe a controlled substance in an amount intended to treat a non-human patient for more than forty-eight (48) hours shall not be required to register in the database.

(b)(1) Each dispenser or dispenser's agent shall, regarding each controlled substance dispensed, submit to the database all of the following information:

- (A) Prescriber identifier;
- (B) Dispensing date of controlled substance;
- (C) Patient identifier;
- (D) Controlled substance dispensed identifier;
- (E) Quantity of controlled substance dispensed;
- (F) Strength of controlled substance dispensed;
- (G) Estimated days supply;
- (H) Dispenser identifier;
- (I) Date the prescription was issued by the prescriber;
- (J) Whether the prescription was new or a refill;

(K) Source of payment; and

(L) Other relevant information as required by rule.

(2) The information in the database, as required by subdivision (b)(1), shall be submitted by a procedure and in a format established by the committee, at least once every seven (7) days for all the controlled substances dispensed during the preceding seven-day period.

(c) The committee shall have the authority to shorten the length of time dispensers are required to submit to the database through the promulgation of rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. When the committee shortens the length of time dispensers are required to submit to the database, the department shall provide notice to all dispensers who are registered in the database at least sixty (60) days prior to the date in which the rule goes into effect. If the committee shortens the length of time which dispensers must submit information to the database, a dispenser may provide to the committee a written statement indicating why it creates a hardship for that dispenser to submit information within that time period, and the committee may grant an extension up to seven (7) days within which that dispenser must submit the information to the database. Such a hardship extension shall be valid for two (2) years and may be renewed by the committee upon request of the dispenser.

(d) Any dispenser, except veterinarian dispensers, that uses a computerized system to record information concerning the dispensing of controlled substances, shall submit the required information to the database utilizing nationally recognized pharmacy telecommunications format standards.

(e) The board shall maintain the database in an electronic file or by other means established by the committee in such a manner so as not to infringe on the legal use of controlled substances, and in such a manner as to facilitate use of the database by the committee for identification of:

(1) Prescribing and dispensing practices and patterns of prescribing and dispensing controlled substances; and

(2) Individuals, facilities or entities that receive prescriptions for controlled substances from prescribers, and who subsequently obtain dispensed controlled substances from a dispenser in quantities or with a frequency inconsistent with generally recognized standards of dosage for that controlled substance, or by means of forged or otherwise false or altered prescriptions.

(f) The committee or a designee appointed by the committee shall review information in the database. If the committee or its designee determines from review that a prescriber or dispenser may have committed a violation of the law, the committee shall notify the entity responsible for licensure, regulation, or discipline of that prescriber or dispenser and shall supply information required by the entity for an investigation of the violation of the law that may have occurred.

(g)(1)(A) The committee shall by rule establish the electronic format in which the information required under this section shall be submitted to the database and shall allow for waiver of electronic reporting for individual dispensers for whom it would cause undue hardship as determined by the committee. The waiver may be valid for two (2) years from ratification by the committee.

(B) The committee may authorize a designee to initially approve a waiver subject to ratification by the committee.

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(2) The committee shall ensure the database system records and shall maintain for reference:

(A) Identification of each person who requests or receives information from the database;

(B) The information provided to each person; and

(C) The date and time the information is requested or provided.

(h) The committee shall make rules to:

(1) Effectively enforce the limitations on access to the database as described in this part; and

(2) Establish standards and procedures to ensure accurate identification of individuals requesting information or receiving information from the database without a request.

**53-10-306. Confidentiality — Disclosure of information — Penalties.**  
**[Effective until July 1, 2016. See the version effective on**  
**July 1, 2016.]**

(a) Information sent to, contained in, and reported from the database in any format is confidential and not subject to title 10, chapter 7, regarding public records, and not subject to subpoena from any court and shall be made available only as provided for in § 53-10-308 and to the following persons in accordance with the limitations stated and rules promulgated pursuant to this part, or as otherwise provided for in § 53-10-311:

(1) Personnel of the committee specifically assigned to conduct analysis or research;

(2) Authorized committee, board, or department of health personnel or any designee appointed by the committee engaged in analysis of controlled substances prescription information as a part of the assigned duties and responsibilities of their employment;

(3) A prescriber conducting medication history reviews who is actively involved in the care of the patient; a prescriber or supervising physician of the prescriber conducting a review of all medications dispensed by prescription attributed to that prescriber; or a prescriber having authority to prescribe or dispense controlled substances, to the extent the information relates specifically to a current or bona fide prospective patient of the prescriber, to whom the prescriber has prescribed or dispensed, is prescribing or dispensing, or considering prescribing or dispensing any controlled substance. Each authorized individual referenced under this subdivision (a)(3) shall have a separate identifiable authentication for access;

(4) A dispenser or pharmacist not authorized to dispense controlled substances conducting drug utilization or medication history reviews who is actively involved in the care of the patient; or a dispenser having authority to dispense controlled substances to the extent the information relates specifically to a current or a bona fide prospective patient to whom that dispenser has dispensed, is dispensing, or considering dispensing any controlled substance. Each authorized individual referenced under this subdivision (a)(4) shall have a separate identifiable authentication for access;

(5) A county medical examiner appointed pursuant to § 38-7-104 when acting in an official capacity as established in § 38-7-109; provided, any access to information from the database shall be subject to the confidenti-

ality provisions of this part except where information obtained from the database is appropriately included in any official report of the county medical examiners, toxicological reports or autopsy reports issued by the county medical examiner under § 38-7-110(c);

(6) Personnel of the following entities actively engaged in analysis of controlled substances prescription information as a part of their assigned duties and responsibilities related directly to TennCare:

(A) The office of inspector general;

(B) The medicaid fraud control unit; and

(C) The bureau of TennCare's chief medical officer, associate chief medical directors, director of quality oversight, and associate director of pharmacy;

(7) A quality improvement committee as defined in § 68-11-272 of a hospital licensed under title 68 or title 33, as part of the committee's confidential and privileged activities under § 68-11-272(b)(4) with respect to the evaluation, supervision or discipline of a healthcare provider employed by the hospital or any of its affiliates or subsidiaries, who is known or suspected by the hospital's administrator to be prescribing controlled substances for the prescriber's personal use;

(8) Law enforcement personnel; provided, that such personnel are engaged in the official investigation and enforcement of state or federal laws involving controlled substances or violations under this part; and that any law enforcement personnel receiving information from the database pursuant to this section shall comply with the requirements of this subsection (a):

(A)(i) Any law enforcement agency or judicial district drug task force that wants one (1) or more of its officers or agents to have the authorization to request information from the database shall first pre-approve each such officer. Pre-approval shall be by the applicant's supervisor, who shall be either the chief of police, county sheriff or the judicial district drug task force director. The list of pre-approved applicants shall be sent to the district attorney general in the judicial district in which the agency or task force has jurisdiction;

(ii) By December 1 of each year, each district attorney general shall send to the board of pharmacy a list of applicants authorized to request information from the database from that general's judicial district for the next calendar year;

(B)(i) If the Tennessee bureau of investigation (TBI) wants one (1) or more of its agents to have the authorization to request information from the database each such agent shall first be pre-approved by the agent's immediate supervisor and division head. Approved applicants shall be sent to the board by the director;

(ii) By December 1 of each year, the TBI director shall send to the board of pharmacy a list of applicants authorized to request information from the database from the bureau for the next calendar year;

(C) An application submitted by law enforcement personnel shall include, but not be limited to the:

(i) Applicant's name; title; agency; agency address; agency contact number; agency supervisor; and badge number, identification number or commission number, and the business email address of each applicant officer or agent, the appropriate district attorney general and, if a TBI agent, the TBI director and their business email addresses; and

(ii) Signatures of the applicant, the applicants approving supervisor and the district attorney general of the judicial district in which the applicant has jurisdiction or the approving division head and the TBI director;

(D) It shall be a duty of the board, as part of its duties to maintain the database pursuant to § 53-10-305(c), to receive and verify the lists of authorized applications sent to it by the district attorneys general and the director of the TBI pursuant to this subsection (a); or

(9) A healthcare practitioner extender, who is acting under the direction and supervision of a prescriber or dispenser, and only to the extent the information relates specifically to a current or bona fide prospective patient to whom the prescriber or dispenser has prescribed or dispensed, is prescribing or dispensing, or considering prescribing or dispensing any controlled substance. Each authorized individual referenced under this subdivision (a)(9) shall have a separate identifiable authentication for access.

(b) When requesting information from the database, the board shall require law enforcement personnel to provide a case number as part of the process for requesting information from the database. The case number entered shall correspond with an official investigation involving controlled substances and information requested should directly relate to the investigation.

(c) The board of pharmacy shall by rule, establish a fee for providing information to a law enforcement agency, judicial district drug task force or TBI pursuant to this section. In determining the fee and type of fee to be charged, the board shall consider options such as an annual fee or a per use, incremental cost basis fee.

(d)(1) Law enforcement personnel and judicial district drug task force agents who are authorized to request information from the database shall resubmit their identifying application information that was submitted pursuant to subdivision (a)(8)(C) to the appropriate district attorney by November 20 of each year. Such resubmitted applications shall be sent by the appropriate district attorney general to the board by December 1 of each year. If during the calendar year a name is added to the list, removed from the list or information about a person on the list changes, the appropriate district attorney shall immediately notify the board of any changes to the list submitted or in the information submitted for each officer or agent on the list application.

(2) TBI agents who are authorized to request information from the database shall resubmit their identifying application information that was submitted pursuant to subdivision (a)(8)(C) to the TBI director by November 20 of each year. Such resubmitted applications shall be sent by the TBI director to the board by December 1 of each year. If during the calendar year a name is added to the list, removed from the list or information about a person on the list changes, the TBI director shall immediately notify the board of any changes to the list submitted or in the information submitted for each officer or agent on the list application.

(e)(1) Information obtained from the database may be shared with other law enforcement personnel or prosecutorial officials, only upon the direction of the officer or agent who originally requested the information and may only be shared with law enforcement personnel from other law enforcement agencies who are directly participating in an official joint investigation.

(2) Any information obtained from the data base that is sent to a law enforcement official or a judicial district drug task force agent shall also be

sent to the district attorney general of the judicial district in which such officer or agent has jurisdiction. Likewise, any database information sent to a TBI agent shall also be sent to the TBI director.

(f) To ensure the privacy and confidentiality of patient records, information obtained from the database by law enforcement personnel shall be retained by the law enforcement personnel's respective department or agency. The information obtained from the database shall not be made a public record, notwithstanding the use of the information in court for prosecution purposes. Information obtained from the database shall be maintained as evidence in accordance with each law enforcement agency's respective procedures relating to the maintenance of evidence.

(g) Any information disseminated pursuant to subdivisions (a)(1)-(7) shall be released to the individual or entity requesting the information by the database manager or by password protected internet access.

(h) Any prescriber, dispenser or healthcare practitioner extender receiving patient-specific information pursuant to subdivision (a)(1), (a)(2), (a)(3), or (a)(4) shall not disclose the information to any person other than:

(1) The patient to whom the information relates for the purpose of adjusting the patient's treatment plans or counseling the patient to seek substance abuse treatment;

(2) Other dispensers or prescribers who are involved or have a bona fide prospective involvement in the treatment of the patient, or dispensers or prescribers identified by the information for the purpose of verifying the accuracy of the information; or

(3) Any law enforcement personnel to whom reporting of controlled substances being obtained in a manner prohibited by § 53-11-401, § 53-11-402(a)(3) or (a)(6) and required by § 53-11-309, or any agent of the prescriber who is directed by the prescriber to cause a report to law enforcement to be made in accordance with § 53-11-309(a) and (d).

(i) If a law enforcement officer, judicial district drug task force agent or TBI agent has probable cause to believe, based upon information received from a database request, that a prescriber or pharmacist may be acting or may have acted in violation of the law, the officer or agent shall consult with the board of pharmacy inspector's office if a pharmacist and the health related boards' investigations unit if a prescriber.

(j)(1) At least every six (6) months, the board shall send a list to each district attorney general containing all requests made for database information during the previous six (6) months. The list shall include the name of the requesting officer or agent, the officer or agent's agency, the date of the request, and the nature of the request, including the case number, for each officer or agent making a request in such district attorney's judicial district. Likewise, a list shall be sent to the director of the TBI for all TBI agents making requests during the previous six (6) months.

(2) Each district attorney general and the TBI director shall use the list to perform an audit to determine if the database information requests made during the preceding six (6) month period correspond to specific cases under investigation in the applicable judicial district or by the bureau and if the information requested is relevant and pertinent to an investigation.

(3) Each district attorney general and the TBI director shall verify all database information requests contained on the list received and send it back to the board within sixty (60) days of receipt. If a database information

request does not correspond to an investigation in the applicable jurisdiction or if the information requested was not relevant or pertinent to the information requested, the district attorney general or director shall so note on the verified list and shall investigate the discrepancy and make a report back to the board within a reasonable period of time.

(4) The results of the audit conducted pursuant to subdivision (j)(2) shall be discoverable by a prescriber, dispenser or healthcare practitioner extender charged with violating any state or federal law involving controlled substances or under a notice of charges proffered by an appropriate licensing board for a violation of any law involving controlled substances, but only the results pertaining to that prescriber, dispenser or healthcare practitioner extender are discoverable. If, however, there is an active criminal investigation involving a prescriber, dispenser or healthcare practitioner extender or the prescriber, dispenser or healthcare practitioner extender is under investigation by any investigations or prosecution unit of the appropriate licensure board, the results of the audit conducted pursuant to subdivision (j)(2) shall not be discoverable by the prescriber, dispenser or healthcare practitioner extender during either such period.

(k)(1) Any person who obtains or attempts to obtain information from the database by misrepresentation or fraud is guilty of a Class A misdemeanor.

(2) Any person who knowingly uses, releases, publishes, or otherwise makes available to any other person or entity any information submitted to, contained in, or obtained from the database for any purpose other than those specified in this part is guilty of a Class A misdemeanor.

(3) Intentional unauthorized use or disclosure of database information by law enforcement personnel, judicial district drug task force members or TBI agents shall be punishable as a Class A misdemeanor.

(4) Any law enforcement personnel, judicial district drug task force member or TBI agent charged with a violation of this section shall have such person's authorization to request information from the database suspended pending final disposition of any criminal prosecution. Any law enforcement personnel, judicial district drug task force member or TBI agent found guilty of a violation of this subsection (i) shall have such person's authorization to request information from the database permanently revoked.

(5) Where an individual authorized under subsection (a) acts in good faith in accessing or using information from the database in accordance with the limitations under this part, that person shall not incur any civil or criminal liability as a result of that use or access.

(l)(1) The following personnel of the department of mental health and substance abuse services actively engaged in analysis of controlled substances prescription information as a part of their assigned duties and responsibilities shall have access to the database for controlled substances prescription information for specific patients:

- (A) The chief pharmacist;
- (B) The state opioid treatment authority (SOTA) or SOTA designee; and
- (C) The medical director.

(2) Aggregate controlled substances prescribing information from the database may be provided upon request by the following personnel of the department of mental health and substance abuse services, who are actively engaged in analysis of controlled substances prescription information as provided in this subsection (l), and may be shared with other personnel of the department of mental health and substance abuse services as needed to

fulfill assigned duties and responsibilities:

- (A) The chief pharmacist;
- (B) The SOTA; or
- (C) The medical director.

(m) Where an investigation is conducted under § 38-7-109, and information within the database is obtained pursuant to the requirements of this part, there exists a rebuttable presumption that the county medical examiner is acting in good faith.

**53-10-308. Release of confidential information. [Effective until July 1, 2016. See the version effective on July 1, 2016.]**

(a) Notwithstanding any other provision of this part to the contrary, the committee or its designee:

(1) After consultation with the member of the committee who represents the board which has licensed the individual being considered for investigation, may release confidential information from the database regarding dispensers, prescribers, healthcare practitioner extenders, or patients, to a manager of any investigations or prosecution unit of an appropriate licensure board, committee, or other governing body that licenses or registers dispensers, prescribers or healthcare practitioner extenders and is engaged in an investigation, adjudication, or prosecution of a violation under any state or federal law that involves a controlled substance;

(2) May release confidential information from the database regarding patients to law enforcement personnel engaged in an investigation, adjudication, or prosecution of a violation under any state or federal law that involves a controlled substance, pursuant to the procedure established in § 53-10-306(a)(6);

(3) Shall release information from the database when ordered by a court to do so upon the court's finding that disclosure is necessary for the conduct of proceedings before the court regarding the investigation, adjudication, or prosecution of a violation under any state or federal law that involves controlled substances and after an appropriate protective order is issued regarding the information to be released to the court.

(b) Before the committee releases confidential information under this section, the applicant must petition the committee for the confidential information, particularly describe the information required, and demonstrate to the committee that the applicant has reason to believe that a violation under any state or federal law that involves a controlled substance has occurred and that the requested information is reasonably related to the investigation, adjudication, or prosecution of the violation.

(c) No information may be released under this section until it has been reviewed by the committee or its designee and the member of the committee who represents the board which has licensed the individual being considered for investigation, and certified that further investigation or prosecution is warranted and that release of the information is necessary to that continued investigation or prosecution.

**53-10-309. Reports. [Effective until July 1, 2016. See the version effective on July 1, 2016.]**

The committee shall report annually on the outcome of the program with respect to its effect on distribution and abuse of controlled substances,

including recommendations for improving control and prevention of diversion of controlled substances in this state. The committee's annual report shall include information about the prescribing and dispensing patterns of prescribers and dispensers, and this data shall be made available electronically to prescribers and dispensers in a format that will allow them to compare their prescribing and dispensing patterns to those of their peers. The committee shall also file an annual report with the health and welfare committee of the senate and the health committee of the house of representatives starting on or by February 1, 2008, and each year thereafter to include a monthly analysis about tracking the individuals or entities that access the database and the security measures taken to ensure that only authorized persons or entities access the database. In addition to the annual report submitted to the general assembly by the committee, authorized committee, board, or department of health personnel engaged in analysis of controlled substance prescription information as a part of the assigned duties and responsibilities of their employment shall release information from the database requested by a member of the general assembly that is related to research, statistical analysis, or education of health care practitioners relative to controlled substances. However, no report released pursuant to this section shall contain the name or other identifying information of a specific prescriber, dispenser or healthcare practitioner extender contained in the report. All information released from the database for such a report shall be in the aggregate.

**53-10-310. Practice sites where a controlled substance dispensed required to provide for electronic access to the controlled substance database — Exceptions — Violations and penalties — Civil liability. [Effective until July 1, 2016. See the version effective on July 1, 2016.]**

(a) Each person or entity operating a practice site where a controlled substance is prescribed or dispensed to a human patient shall provide for electronic access to the database at all times when a prescriber or dispenser provides healthcare services to a human patient potentially receiving a controlled substance.

(b) This section shall not apply to any dispensers that are not required to report pursuant to § 53-10-304(d) or § 53-10-305(g).

(c) A violation of subsection (a) is punishable by a civil penalty not to exceed one hundred dollars (\$100) per day assessed against the person or entity operating the practice site; provided, however, that the penalty shall only be imposed when there is a continued pattern or practice of not providing electronic access to the database.

(d) Any prescriber, dispenser, individual or entity who is authorized to access the database by this part shall not be subject to a suit for civil damages or held civilly liable for the failure to register in, report to, or check the database, or for actions taken after reasonable reliance on information in the database, or accessing the database to determine whether or not the prescriber or dispenser's professional medical credentials are being inappropriately used or for reporting the same to the appropriate authorities, except as otherwise provided in this part.

(e)(1) All prescribers or their designated healthcare practitioner's extenders, unless otherwise exempted under this part, shall check the controlled

substance database prior to prescribing one of the controlled substances identified in subdivision (e)(3) to a human patient at the beginning of a new episode of treatment and shall check the controlled substance database for that human patient at least annually when that prescribed controlled substance remains part of the treatment.

(2) Before dispensing, a dispenser shall have the professional responsibility to check the database or have a healthcare practitioner extender check the database if the dispenser is aware or reasonably certain that a person is attempting to obtain a Schedule II-V controlled substance, identified by the committee as demonstrating a potential for abuse for fraudulent, illegal, or medically inappropriate purposes, in violation of § 53-11-402.

(3) The controlled substances which trigger a check of the controlled substance database pursuant to subdivision (e)(1) include, but are not limited to, all opioids and benzodiazepines. By rule, the committee may require a check of the database for additional Schedule II-V controlled substances that are identified by the committee as demonstrating a potential for abuse.

(4) The board shall adopt rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, that establish standards and procedures to be followed by a dispenser regarding the review of patient information available through the database.

(5) Prescribers are not required to check the controlled substance database before prescribing or dispensing one of the controlled substances identified in subdivision (e)(3) or added to that list by the committee if one (1) or more of the following conditions is met:

(A) The controlled substance is prescribed or dispensed for a patient who is currently receiving hospice care;

(B) The committee has determined that prescribers in a particular medical specialty shall not be required to check the database as a result of the low potential for abuse by patients receiving treatment in that medical specialty;

(C) The controlled substance is prescribed or dispensed to a patient as a non-refillable prescription as part of treatment for a surgical procedure that occurred in a licensed healthcare facility;

(D) The quantity of the controlled substance which is prescribed or dispensed does not exceed an amount which is adequate for a single, seven-day treatment period and does not allow a refill;

(E) The controlled substance is prescribed for administration directly to a patient during the course of inpatient or residential treatment in a hospital or nursing home licensed under title 68 or a mental health hospital licensed under title 33.

(f) Each appropriate licensure board shall promulgate rules pursuant to the Uniform Administrative Procedures Act, to establish procedures, notice requirements, and penalties for prescribers and dispensers who fail to register in, report to, or check the controlled substance database as required.

(g) Notwithstanding any other provision of this part to the contrary, a prescriber, dispenser or healthcare practitioner extender shall not be in violation of this part during any time period in which the controlled substance database is suspended or not operational or the Internet is not operational or available as defined by rules promulgated by the commissioner after consultation with the committee.

**53-10-311. Agreements with other jurisdictions for sharing and dissemination of data and information. [Effective until July 1, 2016.]**

Notwithstanding any other provision of this part to the contrary, the commissioner is authorized to enter into agreements with other states or other entities acting on behalf of a state for the purposes of sharing and dissemination of data and information in the database. Disclosure of such agreements shall be consistent with the provisions and limitations set forth in this part. All such agreements shall specifically provide which prescribers, dispensers, healthcare practitioner extenders or law enforcement personnel who are licensed, registered, or certified in other states shall have access to the database.

**53-10-312. Minimum reporting requirements for wholesalers and manufacturers — Establishment of rules as to reporting requirements.**

(a) Wholesalers and manufacturers, as defined in § 63-10-204, that sell controlled substances at wholesale must at least report the following information to the committee in Automation of Reports and Consolidated Orders System (ARCOS) format or other mutually acceptable format:

- (1) Wholesaler or manufacturer with a drug enforcement administration registration number; provided, that if this number is not applicable, then another mutually acceptable identifier;
- (2) Purchaser's drug enforcement administration registration number; provided, that if this number is not applicable, then another mutually acceptable identifier;
- (3) National drug code number of the actual drug sold;
- (4) Quantity of the drug sold;
- (5) Date of sale; and
- (6) Transaction identifier or invoice number.

(b) The department of health will establish such rules as are necessary to specify which medications shall be reported, the time frames for such reporting, and other reporting requirements as required.

**53-10-301. Short title. [Effective on July 1, 2016. See the version effective until July 1, 2016.]**

*This part shall be known and may be cited as the "Controlled Substance Monitoring Act of 2002."*

**53-10-302. Part definitions. [Effective on July 1, 2016. See the version effective until July 1, 2016.]**

*As used in this part:*

- (1) "Board" means the board of pharmacy created by title 63, chapter 10, part 3;
- (2) "Commissioner" means the commissioner of health;
- (3) "Committee" means the controlled substance database advisory committee created by this part;
- (4) "Database" means the controlled substance database created by this part;

(5) “Department” means the department of health;

(6) “Dispense” means to physically deliver a controlled substance covered by this part to any person, institution or entity with the intent that it be consumed away from the premises in which it is dispensed. It does not include the act of writing a prescription by a practitioner to be filled at a pharmacy licensed by the board;

(7) “Dispenser” means any health care practitioner who has authority to dispense controlled substances, pharmacists, and pharmacies that dispense to any address within this state; and

(8) “Law enforcement personnel” means agents of the Tennessee bureau of investigation, agents of a judicial district drug task force, and certified law enforcement officers certified pursuant to § 38-8-107.

**53-10-303. Creation — Membership — Elections — Meetings — Per diem and travel reimbursement — Public meetings — Rules and regulations. [Effective on July 1, 2016. See the version effective until July 1, 2016.]**

(a) *There is created the controlled substance database advisory committee. The committee members shall be:*

(1) *The executive director of the board of pharmacy, who shall serve as database manager;*

(2) *The director of the department of health’s division of health-related boards;*

(3) *The executive director of the board of medical examiners;*

(4) *One (1) of the governor-appointed and licensed members of each of the following health care professional licensure boards or committees to be chosen by the licensing board or committee:*

(A) *The board of medical examiners;*

(B) *The board of osteopathic examination;*

(C) *The board of dentistry;*

(D) *The board of registration in podiatry;*

(E) *The optometry board;*

(F) *The board of veterinary medical examiners;*

(G) *The board of nursing;*

(H) *The board of medical examiners’ committee for physician assistants;*  
*and*

(I) *The board of pharmacy; and*

(5) *One (1) of the members of the board of pharmacy and one (1) of the members of the board of medical examiners who were appointed to those boards to represent the general public. The boards shall choose those representatives.*

(b) *The committee shall have a chair and vice-chair, who shall be elected annually from its members.*

(c) *The committee shall meet at least annually and as often as deemed necessary either at the call of the chair or upon request of at least three (3) members of the committee. A quorum for purposes of official actions by the committee shall be seven (7) members.*

(d) *The members of the committee chosen to serve by the individual licensure boards and committees, while serving on this committee, shall be deemed to be performing official duties as members of their original board or committee and*

*shall be entitled to the same per diem and travel reimbursements as they would receive for performing their duties for their original board or committee. The member's original board or committee shall pay those per diems and travel reimbursements.*

*(e) At all times, except when considering, reviewing, discussing, advising or taking action in reference to specifically named individuals or dispensers identified from information contained in, or reported to the database, the committee shall be subject to title 8, chapter 44, part 1, regarding public meetings.*

*(f) The commissioner of health shall have the authority to promulgate all rules and regulations, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, necessary for implementation of this part. The commissioner of health shall promulgate rules regarding:*

- (1) Establishing, maintaining, and operating the database;*
- (2) Access to the database and how access is obtained; and*
- (3) Control and dissemination of information contained in the database.*

*(g) The committee shall advise the commissioner of health with respect to any contemplated rulemaking under this part. The committee may make formal recommendations to the commissioner of health.*

*(h)(1) The committee shall have the duty to examine database information to identify unusual patterns of prescribing and dispensing controlled substances that appear to be higher than normal, taking into account the particular specialty, circumstances, patient-type or location of the prescriber or dispenser.*

*(2)(A) If the committee determines that a pharmacist or pharmacy has an unusually high pattern of dispensing controlled substances that is not explained by other factors, it shall refer the pharmacist or pharmacy to the chief board of pharmacy investigator.*

*(B) When the pharmacy investigator completes the investigation of any pharmacy or pharmacist referred to it by the committee pursuant to this subsection (h), the investigator shall report the results of the investigation back to the committee as follows:*

*(i) The investigator shall report that the investigation was dismissed if the results of the investigation indicate that the pharmacist or pharmacy had an unusually high dispensing pattern for explainable, legitimate and lawful reasons; or*

*(ii) The investigator shall report that the investigation was referred to the pharmacy board if the results indicate that a prescriber has an unusually high pattern of prescribing or dispensing controlled substances that are not explained by other factors.*

*(C) If the action taken by the board indicates that the pharmacist or pharmacy had an unusually high dispensing pattern for explainable, legitimate and lawful reasons, the committee shall take that finding into consideration before it again refers the same pharmacist or pharmacy to the investigator based upon similar conduct.*

*(3)(A) If the committee determines that a prescriber has an unusually high pattern of prescribing or dispensing controlled substances that are not explained by other factors, it shall refer the prescriber to the health related boards' investigation unit.*

*(B) When the boards' investigator completes the investigation of any prescriber referred to it by the committee pursuant to this subsection (h), the investigator shall report the results of the investigation back to the*

committee as follows:

(i) *The investigator shall report that the investigation was dismissed if the results of the investigation indicate that the prescriber had an unusually high dispensing pattern for explainable, legitimate and lawful reasons; or*

(ii) *The investigator shall report that the investigation was referred to the health related boards if the results indicate that a prescriber has an unusually high pattern of prescribing or dispensing controlled substances that are not explained by other factors.*

(C) *If the action taken by the board indicate that the prescriber had an unusually high dispensing or prescribing pattern for explainable, legitimate and lawful reasons, the committee shall take that finding into consideration before it again refers the same prescriber to the health related boards' investigation unit based upon similar conduct.*

(4) *If a pharmacy investigator or a member of the health related boards' investigation unit has reason to believe during any part of an investigation that a prescriber or dispenser is in violation of a criminal law, the investigator is authorized to report the conduct to the appropriate district attorney general.*

**53-10-304. Administrative attachment — Controlled substance database — Data requirements. [Effective on July 1, 2016. See the version effective until July 1, 2016.]**

(a) *There is created within the department a controlled substance database to be attached administratively and for purposes of staffing to the board of pharmacy. The executive director of the board shall be responsible for determining staffing.*

(b) *The board and the committee shall establish, administer, maintain and direct the functioning of the database in accordance with this part. The board, upon concurrence of the committee, may, under state procurement laws, contract with another state agency or private entity to establish, operate, or maintain the database. Additionally, the board, upon concurrence of the committee, shall determine whether to operate the database within the board or contract with another entity to operate the database, based on an analysis of costs and benefits.*

(c) *The purpose of the database is to assist in research, statistical analysis, criminal investigations, enforcement of state or federal laws involving controlled substances, and the education of health care practitioners concerning patients who, by virtue of their conduct in acquiring controlled substances, may require counseling or intervention for substance abuse, by collecting and maintaining data as described in this part regarding all controlled substances in Schedules II, III and IV dispensed in this state, and Schedule V controlled substances identified by the controlled substance database advisory committee as demonstrating a potential for abuse.*

(d) *The data required by this part shall be submitted in compliance with this part to the committee by any practitioner, or person under the supervision and control of the practitioner, pharmacist or pharmacy who dispenses a controlled substance contained in Schedules II, III and IV, and Schedule V controlled substances identified by the controlled substance database advisory committee as demonstrating a potential for abuse. The reporting requirement shall not*

apply for the following:

- (1) A drug administered directly to a patient;
- (2) Any drug dispensed by a licensed health care facility; provided, that the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of forty-eight (48) hours;
- (3) Any drug sample dispensed; or
- (4) Any facility that is registered by the United States drug enforcement administration as a narcotic treatment program and is subject to the recordkeeping provisions of 21 CFR 1304.24.

**53-10-305. Submission of information — Data format. [Effective on July 1, 2016. See the version effective until July 1, 2016.]**

(a) Each dispenser shall, regarding each controlled substance dispensed, submit to the committee all of the following information by a procedure and in a format established by the committee at least monthly within ten (10) days following the last day of each calendar month:

- (1) Prescriber identifier;
- (2) Dispensing date of controlled substance;
- (3) Patient identifier;
- (4) Controlled substance dispensed identifier;
- (5) Quantity of controlled substance dispensed;
- (6) Strength of controlled substance dispensed;
- (7) Estimated days supply;
- (8) Dispenser identifier; and
- (9) Other relevant information as required by rule.

(b) A pharmacy dispenser that uses a computerized system to record information concerning the dispensing of controlled substances listed in Schedule II, III, or IV, and Schedule V controlled substances identified by the controlled substance database advisory committee as demonstrating a potential for abuse, shall submit the required information to the committee or its agent utilizing nationally recognized pharmacy telecommunications format standards.

(c) The board of pharmacy shall maintain the database in an electronic file or by other means established by the committee in such a manner as not to infringe on the legal use of controlled substances, and in such a manner as to facilitate use of the database for identification of:

- (1) Prescribing practices and patterns of prescribing and dispensing controlled substances; and
- (2) Individuals, facilities or entities receiving prescriptions for controlled substances from licensed practitioners, and who subsequently obtain dispensed controlled substances from a pharmacy in quantities or with a frequency inconsistent with generally recognized standards of dosage for that controlled substance, or by means of forged or otherwise false or altered prescriptions.

(d)(1) The committee shall by rule establish the electronic format in which the information required under this section shall be submitted to the committee and shall allow for waiver for individual dispensers for whom it would cause undue hardship.

(2) The committee shall ensure the database system records and shall maintain for reference:

- (A) Identification of each person who requests or receives information

*from the database;*

*(B) The information provided to each person; and*

*(C) The date and time the information is requested or provided.*

*(e) The committee shall make rules to:*

*(1) Effectively enforce the limitations on access to the database as described in this part; and*

*(2) Establish standards and procedures to ensure accurate identification of individuals requesting information or receiving information from the database without a request.*

**53-10-306. Confidentiality — Disclosure of information — Penalties.**  
**[Effective on July 1, 2016. See the version effective until July 1, 2016.]**

*(a) Information sent to, contained in, and reported from the database in any format is confidential and not subject to title 10, chapter 7, regarding public records, and not subject to subpoena from any court and shall be made available only as provided for in § 53-10-308 and to the following persons, and in accordance with the limitations stated and rules promulgated pursuant to this part:*

*(1) Personnel of the committee specifically assigned to conduct analysis or research;*

*(2) Authorized committee, board, or department of health personnel engaged in analysis of controlled substances prescription information as a part of the assigned duties and responsibilities of their employment;*

*(3) A licensed health care practitioner having authority to prescribe or dispense controlled substances, to the extent the information relates specifically to a current or bona fide prospective patient of the practitioner, to whom the practitioner has prescribed or dispensed or is prescribing or dispensing or considering prescribing or dispensing any controlled substance;*

*(4) A licensed pharmacist having authority to dispense controlled substances to the extent the information relates specifically to a current patient to whom that pharmacist has dispensed, is dispensing or considering dispensing any controlled substance;*

*(5) A county medical examiner appointed pursuant to § 38-7-104 when acting in an official capacity as established in § 38-7-109; provided, any access to information from the database shall be subject to the confidentiality provisions of this part except where information obtained from the database is appropriately included in any official report of the county medical examiners, toxicological reports or autopsy reports issued by the county medical examiner under § 38-7-110(c);*

*(6) Personnel of the following entities actively engaged in analysis of controlled substances prescription information as a part of their assigned duties and responsibilities related directly to TennCare:*

*(A) The office of inspector general;*

*(B) The medicaid fraud control unit; and*

*(C) The bureau of TennCare's chief medical officer, associate chief medical directors, director of quality oversight, and associate director of pharmacy; or*

*(7) A quality improvement committee as defined in § 68-11-272 of a hospital licensed under title 68 or title 33, as part of the committee's*

*confidential and privileged activities under § 68-11-272(b)(4) with respect to the evaluation, supervision or discipline of a healthcare provider employed by the hospital or any of its affiliates or subsidiaries, who is known or suspected by the hospital's administrator to be prescribing controlled substances for the prescriber's personal use;*

*(8) Law enforcement personnel; provided, that such personnel are engaged in the official investigation and enforcement of state or federal laws involving controlled substances; and that any law enforcement personnel receiving information from the database pursuant to this section shall comply with the requirements of this subsection (a):*

*(A)(i) Any law enforcement agency or judicial district drug task force that wants one (1) or more of its officers or agents to have the authorization to request information from the database shall first pre-approve each such officer. Pre-approval shall be by the applicant's supervisor, who shall be either the chief of police, county sheriff or the judicial district drug task force director. The list of pre-approved applicants shall be sent to the district attorney general in the judicial district in which the agency or task force has jurisdiction.*

*(ii) By December 1 of each year, each district attorney general shall send to the board of pharmacy a list of applicants authorized to request information from the database from that general's judicial district for the next calendar year.*

*(B)(i) If the Tennessee bureau of investigation (TBI) wants one (1) or more of its agents to have the authorization to request information from the database each such agent shall first be pre-approved by the agent's immediate supervisor and division head. Approved applicants shall be sent to the board by the director.*

*(ii) By December 1 of each year, the TBI director shall send to the board of pharmacy a list of applicants authorized to request information from the database from the bureau for the next calendar year.*

*(C) An application submitted by a law enforcement agency, a judicial drug task force or the TBI shall include, but not be limited to the:*

*(i) Applicant's name; title; agency; agency address; agency contact number; agency supervisor; and badge number, identification number or commission number, and the business email address of each applicant officer or agent, the appropriate district attorney general and, if a TBI agent, the TBI director and their business email addresses; and*

*(ii) Signatures of the applicant, the applicants approving supervisor and the district attorney general of the judicial district in which the applicant has jurisdiction or the approving division head and the TBI director.*

*(D) It shall be a duty of the board, as part of its duties to maintain the database pursuant to § 53-10-305(c), to receive and verify the lists of authorized applications sent to it by the district attorneys general and the director of the TBI pursuant to this subsection (a).*

*(b) When requesting information from the database, the board shall require law enforcement personnel to provide a case number as part of the process for requesting information from the database. The case number entered shall correspond with an official investigation involving controlled substances and information requested should directly relate to the investigation.*

*(c) The board of pharmacy shall by rule, establish a fee for providing*

*information to a law enforcement agency, judicial district drug task force or TBI pursuant to this section. In determining the fee and type of fee to be charged, the board shall consider options such as an annual fee or a per use, incremental cost basis fee.*

*(d)(1) Law enforcement personnel and judicial district drug task force agents who are authorized to request information from the database shall resubmit their identifying application information that was submitted pursuant to subdivision (a)(8)(C) to the appropriate district attorney by November 20 of each year. Such resubmitted applications shall be sent by the appropriate district attorney general to the board by December 1 of each year. If during the calendar year a name is added to the list, removed from the list or information about a person on the list changes, the appropriate district attorney shall immediately notify the board of any changes to the list submitted or in the information submitted for each officer or agent on the list application.*

*(2) TBI agents who are authorized to request information from the database shall resubmit their identifying application information that was submitted pursuant to subdivision (a)(8)(C) to the TBI director by November 20 of each year. Such resubmitted applications shall be sent by the TBI director to the board by December 1 of each year. If during the calendar year a name is added to the list, removed from the list or information about a person on the list changes, the TBI director shall immediately notify the board of any changes to the list submitted or in the information submitted for each officer or agent on the list application.*

*(e)(1) Information obtained from the database may be shared with other law enforcement personnel or prosecutorial officials, only upon the direction of the officer or agent who originally requested the information and may only be shared with law enforcement personnel from other law enforcement agencies who are directly participating in an official joint investigation.*

*(2) Any information obtained from the data base that is sent to a law enforcement official or a judicial district drug task force agent shall also be sent to the district attorney general of the judicial district in which such officer or agent has jurisdiction. Likewise, any database information sent to a TBI agent shall also be sent to the TBI director.*

*(f) To ensure the privacy and confidentiality of patient records, information obtained from the database by law enforcement personnel shall be retained by the law enforcement personnel's respective department or agency. The information obtained from the database shall not be made a public record, notwithstanding the use of the information in court for prosecution purposes. Information obtained from the database shall be maintained as evidence in accordance with each law enforcement agency's respective procedures relating to the maintenance of evidence.*

*(g) Any information disseminated pursuant to subdivisions (a)(1)-(7) shall be released to the individual or entity requesting the information by the database manager or by password protected internet access.*

*(h) Any licensed practitioner or pharmacist receiving patient-specific information pursuant to subdivision (a)(1), (a)(2), (a)(3) or (a)(4) shall not disclose the information to any person other than:*

*(1) The patient to whom the information relates and then only for the purpose of adjusting the patient's treatment plans or counseling the patient to seek substance abuse treatment;*

*(2) Other dispensers identified by the information and then only for the purposes of verifying the accuracy of the information; and*

*(3) Any law enforcement agency or judicial district drug task force to whom reporting of controlled substances being obtained in a manner prohibited by § 53-11-402(a)(6) is required by § 53-11-309.*

*(i) If a law enforcement officer, judicial district drug task force agent or TBI agent has probable cause to believe, based upon information received from a database request, that a prescriber or pharmacist may be acting or may have acted in violation of the law, the officer or agent shall consult with the board of pharmacy inspector's office if a pharmacist and the health related boards' investigations unit if a prescriber.*

*(j)(1) At least every six (6) months, the board shall send a list to each district attorney general containing all requests made for database information during the previous six (6) months. The list shall include the name of the requesting officer or agent, the officer or agent's agency, the date of the request, and the nature of the request, including the case number, for each officer or agent making a request in such district attorney's judicial district. Likewise, a list shall be sent to the director of the TBI for all TBI agents making requests during the previous six (6) months.*

*(2) Each district attorney general and the TBI director shall use the list to perform an audit to determine if the database information requests made during the preceding six (6) month period correspond to specific cases under investigation in the applicable judicial district or by the bureau and if the information requested is relevant and pertinent to an investigation.*

*(3) Each district attorney general and the TBI director shall verify all database information requests contained on the list received and send it back to the board within sixty (60) days of receipt. If a database information request does not correspond to an investigation in the applicable jurisdiction or if the information requested was not relevant or pertinent to the information requested, the district attorney general or director shall so note on the verified list and shall investigate the discrepancy and make a report back to the board within a reasonable period of time.*

*(4) The results of the audit conducted pursuant to subdivision (j)(2) shall be discoverable by a prescriber or pharmacist charged with violating any state or federal law involving controlled substances or under a notice of charges proffered by a licensing board for a violation of any law involving controlled substances, but only the results pertaining to that prescriber or pharmacist is discoverable. However, if there is an active criminal investigation involving a prescriber or the prescriber is under investigation by the health related boards' investigation unit, the results of the audit conducted pursuant to subdivision (j)(2) shall not be discoverable by the prescriber during either such period.*

*(k)(1) Any person who obtains or attempts to obtain information from the database by misrepresentation or fraud is guilty of a Class A misdemeanor.*

*(2) Any person who knowingly uses, releases, publishes, or otherwise makes available to any other person or entity any information submitted to, contained in, or obtained from the database for any purpose other than those specified in this part is guilty of a Class A misdemeanor.*

*(3) Intentional unauthorized use or disclosure of database information by law enforcement personnel, judicial district drug task force members or TBI agents shall be punishable as a Class A misdemeanor.*

(4) Any law enforcement personnel, judicial district drug task force member or TBI agent charged with a violation of this section shall have such person's authorization to request information from the database suspended pending final disposition of any criminal prosecution. Any law enforcement personnel, judicial district drug task force member or TBI agent found guilty of a violation of this subsection (i) shall have such person's authorization to request information from the database permanently revoked.

(5) Where an individual authorized under subsection (a) acts in good faith in accessing or using information from the database in accordance with the limitations under this part, that person shall not incur any civil or criminal liability as a result of that use or access.

(1)(1) The following personnel of the department of mental health and substance abuse services actively engaged in analysis of controlled substances prescription information as a part of their assigned duties and responsibilities shall have access to the database for controlled substances prescription information for specific patients:

(A) The chief pharmacist;

(B) The state opioid treatment authority (SOTA) or SOTA designee; and

(C) The medical director.

(2) Aggregate controlled substances prescribing information from the database may be provided upon request by the following personnel of the department of mental health and substance abuse services, who are actively engaged in analysis of controlled substances prescription information as provided in this subsection (1), and may be shared with other personnel of the department of mental health and substance abuse services as needed to fulfill assigned duties and responsibilities:

(A) The chief pharmacist;

(B) The SOTA; or

(C) The medical director.

(m) Where an investigation is conducted under § 38-7-109, and information within the database is obtained pursuant to the requirements of this part, there exists a rebuttable presumption that the county medical examiner is acting in good faith.

**53-10-307. Failure to submit information — Liability. [Effective on July 1, 2016. See the version effective until July 1, 2016.]**

(a) The failure of a dispenser to submit information to the database required under this part after the committee has submitted a specific written request for the information, or when the committee determines the individual has a demonstrable pattern of failing to submit the information as required, is grounds for the denial of licensure, renewal of licensure, or other disciplinary action against the dispenser before the licensing board with jurisdiction over the dispenser and for the committee to take the following actions:

(1) Recommend to the appropriate licensure board that it should refuse to issue a license to the individual;

(2) Recommend to the appropriate licensure board that it should refuse to renew the individual's license; and

(3) Recommend to the appropriate licensure board that it should commence disciplinary action against the licensee seeking revocation, suspension

*or other appropriate discipline, including civil penalties.*

*(b) An individual or entity that has submitted information to the database in accordance with this part and in good faith shall not be subject to a suit for civil damages nor held civilly liable for having submitted the information.*

*(c) An individual or entity that in good faith disseminates information contained in, or derived from, the database to the individuals authorized by this part to receive it in the manner authorized by this part or rules promulgated pursuant to this part, shall not be subject to a suit for civil damages nor held individually liable for having done so.*

*(d) No health care practitioner licensed by any board or committee shall be subject to licensure disciplinary action for submitting the information required by this part to the committee and the submission of the information shall not be deemed to be a breach of any confidentiality, ethical duty to a patient, or the sharing of any professional secret.*

**53-10-308. Release of confidential information. [Effective on July 1, 2016. See the version effective until July 1, 2016.]**

*(a) Notwithstanding any other provision of this part to the contrary, the committee may release confidential information from the database regarding practitioners, patients, or both, to a manager of any investigations or prosecution unit of a board, committee, or other governing body that licenses practitioners and is engaged in any investigation, an adjudication, or a prosecution of a violation under any state or federal law that involves a controlled substance.*

*(b) Before the committee releases confidential information under this section, the applicant must petition the committee for the confidential information, particularly describe the information required, and demonstrate to the committee that the applicant has reason to believe that a violation under any state or federal law that involves a controlled substance has occurred and that the requested information is reasonably related to the investigation, adjudication, or prosecution of the violation.*

*(c) No information may be released under this section until it has been reviewed by the committee, including a member of the committee who is licensed in the same profession as the prescribing or dispensing practitioner identified by the data, and until the committee, including that member, has certified that further investigation or prosecution is warranted and that release of the information is necessary to that continued investigation or prosecution.*

**53-10-309. Reports. [Effective on July 1, 2016. See the version effective until July 1, 2016.]**

*The committee shall report annually on the outcome of the program with respect to its effect on distribution and abuse of controlled substances, including recommendations for improving control and prevention of diversion of controlled substances in this state. The committee shall also file an annual report with the health and welfare committee of the senate and the health committee of the house of representatives starting on or by February 1, 2008, and each year thereafter to include a monthly analysis about tracking the individuals or entities that access the database and the security measures taken to ensure that only authorized persons or entities access the database. In addition to the annual report submitted to the general assembly by the committee, authorized*

*committee, board, or department of health personnel engaged in analysis of controlled substance prescription information as a part of the assigned duties and responsibilities of their employment shall release information from the database requested by a member of the general assembly that is related to research, statistical analysis, or education of health care practitioners relative to controlled substances. However, no report released pursuant to this section shall contain the name or other identifying information of a specific prescriber or pharmacist contained in the report. All information released from the database for such a report shall be in the aggregate.*

**53-10-310. Practice sites where a controlled substance dispensed required to provide for electronic access to the controlled substance database — Exceptions — Violations and penalties — Civil liability. [Effective on July 1, 2016. See the version effective until July 1, 2016.]**

*(a) Each practice site where a controlled substance is dispensed shall provide for electronic access to the database at all times when the dispenser provides health care services to a human patient potentially receiving a controlled substance.*

*(b) This section shall not apply to any dispensers that are not required to report pursuant to § 53-10-304(d).*

*(c) A violation of subsection (a) is punishable by a civil penalty not to exceed one hundred dollars (\$100) a day assessed against the prescriber or the pharmacy as defined in § 63-10-204; provided, however, that the penalty shall only be imposed where there is a continued pattern or practice of not providing electronic access to the database.*

*(d) Any dispenser, individual or entity shall not be subject to a suit for civil damages nor held civilly liable for the failure to check the database or for actions taken after reasonable reliance on information in the database.*

**53-10-311. [Repealed.] [Effective on July 1, 2016. See the version effective from January 1, 2013, until July 1, 2016.]**

**53-10-312. Minimum reporting requirements for wholesalers and manufacturers — Establishment of rules as to reporting requirements.**

*(a) Wholesalers and manufacturers, as defined in § 63-10-204, that sell controlled substances at wholesale must at least report the following information to the committee in Automation of Reports and Consolidated Orders System (ARCOS) format or other mutually acceptable format:*

*(1) Wholesaler or manufacturer with a drug enforcement administration registration number; provided, that if this number is not applicable, then another mutually acceptable identifier;*

*(2) Purchaser's drug enforcement administration registration number; provided, that if this number is not applicable, then another mutually acceptable identifier;*

*(3) National drug code number of the actual drug sold;*

*(4) Quantity of the drug sold;*

*(5) Date of sale; and*

*(6) Transaction identifier or invoice number.*

*(b) The department of health will establish such rules as are necessary to*

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specify which medications shall be reported, the time frames for such reporting, and other reporting requirements as required.

**53-10-401. Tamper-proof prescriptions.**

(a) All prescriptions written or printed by practitioners authorized to write prescriptions in this state shall be written on either tamper-resistant prescription paper or printed utilizing a technology that results in a tamper-resistant prescription that meets the current centers for medicare and medicaid services guidance to state medicaid directors regarding § 7002(b) of the United States Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, P.L. 110-28, and meets or exceeds specific TennCare requirements for tamper-resistant prescriptions.

(b) A pharmacist shall not fill a written prescription from a Tennessee practitioner unless issued in compliance with tamper-resistant prescription requirements as described in subsection (a), except that a pharmacist may provide emergency supplies in accordance with TennCare or other insurance contract requirements. Nothing in this section shall be construed to impact regulations regarding verbal, facsimile, electronic, or out-of-state prescription practices.

(c) All existing statutory requirements regarding prescriber-specific information to be included on prescriptions shall also apply to tamper-resistant prescriptions.

(d) Unique serial numbers may be included on tamper-resistant prescriptions for purposes of enhancing efforts to track and enforce any potential fraud. Inclusion of such numbers on the prescription shall not be construed as obligating prescribers or pharmacists to any additional tracking, monitoring or reporting requirements and prescribers and pharmacists shall bear no responsibility or liability with respect to the potential use of these unique serial numbers for enforcement purposes.

(e) Practitioners shall utilize reasonable safeguards to assure against theft or unauthorized use of any prescriptions.

(f) Manufacturers of tamper-resistant prescription paper shall have an annual industry-approved SAS 70 audit that shall be made available by the manufacturer upon request by the board of pharmacy. The board of pharmacy shall maintain a list of any manufacturers who fail to show proof of such audit. The list shall be made available to prescribers and pharmacists in this state in a manner deemed appropriate by the board of pharmacy.

(g) This section shall not apply to prescriptions written by veterinarians.

(h) This section shall not apply to prescriptions written for inpatients of a hospital, outpatients of a hospital where the doctor, or other person authorized to write prescriptions, writes the order into the hospital medical record and then the order is given directly to the hospital pharmacy and the patient never has the opportunity to handle the written order, a nursing home or an assisted care living facility as defined in § 68-11-201 or inpatients or residents of a mental health hospital or residential facility licensed under title 33 or individuals incarcerated in a local, state or federal correctional facility.

**53-11-308. Prescription requirements.**

(a) Except when dispensed directly by a practitioner other than a pharmacy to an ultimate user, no controlled substance in Schedule II may be dispensed

without the written prescription of a practitioner.

(b) In emergency situations, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of § 53-11-305. No prescription for a Schedule II substance may be refilled.

(c) Except when dispensed directly by a practitioner other than a pharmacy to an ultimate user, a controlled substance included in Schedule III or IV that is a prescription drug shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six (6) months after the date of the written or oral prescription or be refilled more than five (5) times, unless renewed by the practitioner.

(d) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(e) No prescription for any opioids or benzodiazepines may be dispensed in quantities greater than a thirty-day supply.

(f) If a prescriber dispenses any opioids, benzodiazepines, barbiturates, or carisoprodol, then the prescriber shall submit the transaction to the controlled substances monitoring database operated under chapter 10, part 3 of this title.

(g) Any prescribers of opioids, benzodiazepines, barbiturates or carisoprodol, either alone, concurrently, or sequentially with any other opioids, benzodiazepines, barbiturates, or carisoprodol to patients who are in chronic, long-term drug therapy for ninety (90) days or longer shall consider mandatory urine drug testing. This subsection (g) shall not supercede any rules promulgated by the commissioner for urine drug testing by registered pain management clinics.

**53-11-402. Fraud — Penalties. [Effective until July 1, 2016. See the version effective on July 1, 2016.]**

(a) It is unlawful for any person knowingly or intentionally to:

(1) Distribute as a registrant a controlled substance classified in Schedule I or II, except pursuant to an order form as required by § 53-11-307;

(2) Use in the course of the manufacture or distribution of a controlled substance a registration number that is fictitious, revoked, suspended or issued to another person;

(3) Acquire or obtain, or attempt to acquire or attempt to obtain, possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge. Any person who violates this subdivision (a)(3) may, upon first conviction, have the sentence suspended and may as a condition of the suspension be required to participate in a program of rehabilitation at a drug treatment facility operated by the state or a comprehensive community mental health center;

(4) Furnish false or fraudulent material information in, or omit any material information from, any application, report or other document required to be kept or filed under part 3 of this chapter and this part, or title 39, chapter 17, part 4, or any record required to be kept by part 3 of this chapter and this part, or title 39, chapter 17, part 4;

(5) Make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name, or other identifying mark, imprint or device of another or any likeness of the trademark, trade name, or other identifying mark, imprint or device of another upon any drug or container or labeling of any drug or container so

as to render the drug a counterfeit substance; or

(6) Notwithstanding § 71-5-2601, deceive or fail to disclose to a physician, nurse practitioner, ancillary staff or other health care provider from whom the person obtains a controlled substance or a prescription for a controlled substance that the person has received either the same controlled substance or a prescription for the same controlled substance or a controlled substance of similar therapeutic use or a prescription for a controlled substance of similar therapeutic use from another practitioner within the previous thirty (30) days.

(b)(1) A violation of this section is a Class D felony, except that a violation of subdivision (a)(6) is a Class A misdemeanor and any violation of subdivision (a)(6) involving more than two hundred fifty (250) units of a controlled substance is a Class E felony. For purposes of this subdivision (b)(1), a “unit” means an amount of a controlled substance in any form that would equate to the initial single individual dosage recommended by the manufacturer of the controlled substance.

(2) Notwithstanding § 40-35-111, regarding the authorized fine for a Class D felony, the authorized fine for a violation of this section shall be as follows:

For a violation involving a Schedule I or II controlled substance	\$ 100,000
For a violation involving a Schedule III or IV controlled substance	50,000
For a violation involving a Schedule V or VI controlled substance	5,000
For a violation involving a Schedule VII controlled substance	1,000
For any other violation of this section not involving a scheduled controlled substance	20,000

(3) Nothing contained in this section shall preclude a prosecution under the general drug laws.

(c) Any person who violates subdivision (a)(3) may, upon first conviction, have the sentence suspended and may as a condition of the suspension be required to participate in a program of rehabilitation at a drug treatment facility operated by the state or a comprehensive community mental health center.

**53-11-402. Fraud — Penalties. [Effective on July 1, 2016. See the version effective until July 1, 2016.]**

*(a) It is unlawful for any person knowingly or intentionally to:*

*(1) Distribute as a registrant a controlled substance classified in Schedule I or II, except pursuant to an order form as required by § 53-11-307;*

*(2) Use in the course of the manufacture or distribution of a controlled substance a registration number that is fictitious, revoked, suspended or issued to another person;*

*(3) Acquire or obtain, or attempt to acquire or attempt to obtain, possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge. Any person who violates this subdivision (a)(3) may, upon first*

*conviction, have the sentence suspended and may as a condition of the suspension be required to participate in a program of rehabilitation at a drug treatment facility operated by the state or a comprehensive community mental health center;*

*(4) Furnish false or fraudulent material information in, or omit any material information from, any application, report or other document required to be kept or filed under part 3 of this chapter and this part, or title 39, chapter 17, part 4, or any record required to be kept by part 3 of this chapter and this part, or title 39, chapter 17, part 4;*

*(5) Make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name, or other identifying mark, imprint or device of another or any likeness of the trademark, trade name, or other identifying mark, imprint or device of another upon any drug or container or labeling of any drug or container so as to render the drug a counterfeit substance; or*

*(6) Notwithstanding § 71-5-2601, deceive or fail to disclose to a physician, nurse practitioner, ancillary staff or other health care provider from whom the person obtains a controlled substance or a prescription for a controlled substance that the person has received either the same controlled substance or a prescription for the same controlled substance or a controlled substance of similar therapeutic use or a prescription for a controlled substance of similar therapeutic use from another practitioner within the previous thirty (30) days.*

*(b)(1) A violation of this section is a Class D felony, except that a violation of subdivision (a)(6) is a Class A misdemeanor.*

*(2) Notwithstanding § 40-35-111, regarding the authorized fine for a Class D felony, the authorized fine for a violation of this section shall be as follows:*

<i>For a violation involving a Schedule I or II controlled substance</i>	<i>\$ 100,000</i>
<i>For a violation involving a Schedule III or IV controlled substance</i>	<i>50,000</i>
<i>For a violation involving a Schedule V or VI controlled substance</i>	<i>5,000</i>
<i>For a violation involving a Schedule VII controlled substance</i>	<i>1,000</i>
<i>For any other violation of this section not involving a scheduled controlled substance</i>	<i>20,000</i>

*(3) Nothing contained in this section shall preclude a prosecution under the general drug laws.*

*(c) Any person who violates subdivision (a)(3) may, upon first conviction, have the sentence suspended and may as a condition of the suspension be required to participate in a program of rehabilitation at a drug treatment facility operated by the state or a comprehensive community mental health center.*

#### **53-11-416. Offense of prescription drug fraud.**

*(a) It is unlawful for any person knowingly or intentionally to acquire or obtain, or attempt to acquire or obtain, possession of a controlled substance by*

misrepresentation, fraud, forgery, deception, or subterfuge or in violation of § 39-14-150. A violation of this section shall be deemed the offense of prescription drug fraud.

(b) Prescription drug fraud is a continuing offense because the offense may involve an unlawful taking and use of personal identifying information that remains in the lawful possession of a victim wherever the victim currently resides or is found. As provided in this section, such unlawful taking and use may be elements of an offense of prescription drug fraud and continues to occur wherever the victim resides or is found.

(c) For purposes of a violation of this section, "victim" includes, but is not limited to, the person whose personal identifying information, as defined in § 39-14-150(e), was acquired, obtained, possessed, bought, or used in violation of this section or sold, transferred, given, traded, loaned, delivered, or possessed in violation of this section. "Victim" also includes, but is not limited to, a physician, nurse practitioner, or other health care provider whose personal identifying information was unlawfully used.

(d) Pursuant to §§ 39-11-103 and 39-14-150(j)(2), if a victim of prescription drug fraud resides or is found in this state, an essential element of the offense is committed in this state, and a defendant is subject to prosecution in this state, regardless of whether the defendant was ever actually in this state.

(e) Venue for the offense of prescription drug fraud shall be in any county where an essential element of the offense was committed, including, but not limited to, in any county where the victim resides or is found, regardless of whether the defendant was ever actually in such county.

(f) The offense of prescription drug fraud shall be punished in the same manner as a violation of § 53-11-402.

**53-11-417 — 53-11-450. [Reserved.]**

**54-1-119. Design-build contracts.**

(a)(1) Notwithstanding any other law to the contrary, the department may award contracts using a design-build procedure in accordance with this section.

(2) As used in this section, "design-build contract" means an agreement that may include, but is not limited to, design, right-of-way acquisition, or utility relocation, or all of those, along with the construction of a project by a single entity.

(b) Selection criteria for a design-build contract shall include the cost of the project and may include design-build firm qualifications, time of completion, innovation, design and construction quality, design innovation, or other technical or quality related criteria, as determined by the department.

(c) The department is authorized to award a stipulated fee to design-build firms that submit responsive proposals but are not awarded the design-build contract. The department shall not be required to award a stipulated fee, but if it elects to award the fee, the amount of the stipend and the terms under which stipends are to be paid shall be stated in the request for proposals.

(d) The department's authority to use design-build contracting procedures as provided in this section shall be subject to the following limitations:

(1) The department may initiate up to fifteen (15) design-build contracts in any one (1) fiscal year, if the contract has a total estimated contract

amount of less than one million dollars (\$1,000,000);

(2) The department may not initiate more than five (5) design-build contracts in any one (1) fiscal year, if the contract has a total estimated contract amount in excess of one million dollars (\$1,000,000); and

(3) If the proposed design-build contract has a total estimated contract amount in excess of seventy million dollars (\$70,000,000), the department shall specifically identify the project as a proposed design-build project in the transportation improvement program submitted annually to the general assembly in support of the commissioner's annual funding recommendations.

(e) The department shall prepare a report on the effectiveness of design-build contracts and submit it to the chairs of the transportation and safety committee of the senate and transportation committee of the house of representatives upon the completion of three (3) design-build contracts that have a total contract amount in excess of one million dollars (\$1,000,000).

(f) The department may establish agency policy, or the department may promulgate rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, or both, in furtherance of this part.

#### **54-1-125. [Repealed.]**

#### **54-1-133. Funding for signing and marking memorial highways and bridges.**

The department, subject to appropriation by the general assembly, shall fund from resources in the highway fund the cost of signage and marking of an interstate, United States highway, or state highway designated as a memorial highway or memorial bridge for any of the following individuals killed in the line of duty:

(1) A member of the military, including the reserves and national guard; or

(2) Any state or local public safety official, including, but not limited to, members of the highway patrol, county law enforcement officials, local police officers, firefighters, whether paid or volunteer, and emergency medical personnel.

#### **54-1-134. Vandalism of state highway structures.**

(a)(1) As used in this subsection (a), "state highway structure" includes any state highway facility; building; bridge; overpass; tunnel; barricade; fence; wall; traffic control device; right-of-way; sign or marker of any nature whatsoever erected upon or maintained within or adjacent to a state highway or the state highway right-of-way by any authorized source or under the authority of the department; and letters or figures of any nature whatsoever on any sign, marker, barricade or fence.

(2) It is an offense for any person who is not authorized to construct or repair a state highway structure to knowingly carve upon, write, paint or otherwise mark upon, deface, rearrange, or alter any state highway structure.

(3) It is an offense for any person who is not authorized to construct or repair a state highway structure to knowingly, in any manner, destroy, damage, knock down, mutilate, mar, steal or remove any state highway

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structure.

(4) A violation of subdivision (a)(2) or (a)(3) is a Class A misdemeanor.

(5) Whenever any state highway structure described in this subsection (a) is damaged knowingly or negligently by any person, firm or corporation, the person, firm or corporation shall be liable for the damage to the state highway structure, to be recovered by a civil action in the name of the state. The civil action shall be instituted by the attorney general and reporter, whose duty it shall be to represent the state in the action.

(b)(1) Any person who reports information to a law enforcement officer that leads to the apprehension and conviction of a person for a violation of this section shall receive a reward of two hundred fifty dollars (\$250). The county where the conviction occurs shall provide the reward money from the proceeds of the fines collected under this section.

(2) The proceeds from the fines imposed for violations of this section shall be collected by the respective court clerks and then deposited in a dedicated county fund. The fund shall not revert to the county general fund at the end of a fiscal year but shall remain for the vandalism enforcement rewards established in subdivision (b)(1).

(3) Each county shall expend the funds generated by the fines provided for in this section by appropriation for the vandalism enforcement rewards. Excess funds, if any, may be expended for litter control programs on adoption of an appropriate resolution by the county legislative body.

#### **54-1-205. Employee encouraging purchase of particular material or product unlawful.**

(a) It is unlawful for any employee of the department of transportation to encourage in any manner the purchase of any particular material or product or to assist in the initiation of requisitions for any materials or products to be purchased by any department of this state when such employee is directly interested as defined in § 12-4-101 in such material or product.

(b) A violation of subsection (a) is a Class C misdemeanor.

#### **54-1-401. Litter prevention and control.**

In recognition of the exorbitant societal costs associated with littering and in the interest of a cleaner, more beautiful Tennessee, the department of transportation is authorized to establish a litter prevention and control program.

#### **54-1-402. Citizen reporting of littering.**

The litter prevention and control program may include as one (1) of its components a process by which citizens can report directly to the department of transportation instances of persons littering from motor vehicles onto the state's roads and highways, whether the offenders are intentionally littering or are accidentally dropping objects or debris from an uncovered or improperly secured load. The process may provide the capability for citizens to report litterers online by means of the completion of a standard form, the form to be accessed via the Internet from the program's web site. The department may also make provisions for citizens to report litterers via e-mail and a toll-free telephone line.

**54-1-501. Short title — Pilot program for alternative procurement procedure. [Effective on July 1, 2014.]**

*(a) This part shall be known and may be cited as the “Tennessee Department of Transportation Contracts for Construction Manager/General Contractor Services Pilot Program.”*

*(b) This part provides a pilot program that allows the department to engage in an alternative procurement procedure for certain transportation projects performed by the department of transportation.*

*(c) It is the intent of the general assembly in enacting this part to provide a pilot program to test the utilization of a construction manager/general contractor (CM/GC) method as a cost-effective and efficient option for constructing transportation projects.*

*(d) The CM/GC method allows the department to engage a construction manager during the design process to provide input on the design. During the design phase, the construction manager provides advice including, but not limited to, constructability review, scheduling, pricing, and phasing to assist the department to design a more efficient and well-designed project. The construction manager/general contractor may subsequently construct the project if the department and the CM/GC reach agreement on a guaranteed maximum price for construction.*

**54-1-502. Part definitions. [Effective on July 1, 2014.]**

*As used in this part:*

*(1) “Authorized contingency” means the contingency prepared and submitted by the CM/GC as part of the GMP, which is designed to cover costs that may result from incomplete design, unforeseen and unpredictable conditions, or uncertainties within the defined project scope which a prudent CM/GC would not have reasonably detected or anticipated during the discharge of CM/GC’s pre-construction duties;*

*(2) “Commissioner” means the commissioner of transportation;*

*(3) “Construction manager/general contractor” or “CM/GC” means a business firm, separate from the project designer, that is able to provide pre-construction services during the design and development phase of a project;*

*(4) “Construction manager/general contractor method” or “CM/GC method” means a project delivery method in which a construction manager is procured to provide pre-construction services and the CM/GC may subsequently construct the project, or any part of the project, if the department and the firm reach agreement on a guaranteed maximum price;*

*(5) “Department” means the department of transportation;*

*(6) “Guaranteed maximum price” or “GMP” means the total dollar amount within which the CM/GC commits to complete construction of the project, including the CM/GC’s direct costs, overhead, and profit, plus any authorized contingency. The GMP may be supplemented at a later date to cover additional costs arising from changes in the scope of work as the department may subsequently direct in writing; and*

*(7) “Pre-construction services” may include, but not be limited to, cost estimates, schedule analysis, sequencing of work, risk identification and mitigation, constructability reviews, evaluation of alternative construction options, assistance with various permits, coordination with public or private*

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*utility service providers, communication with third-party stakeholders and/or the public, development of a GMP, and any directly related or similar services as may be necessary or useful to assist the department with the design and development of a project to the construction phase.*

**54-1-503. Selection of projects by commissioner. [Effective on July 1, 2014.]**

*(a) Notwithstanding any other law to the contrary, during the term of this pilot program, the commissioner may select up to a total of three (3) projects for the use of the CM/GC method of project delivery. The aggregate total construction costs of the pilot program projects shall not exceed two hundred million dollars (\$200,000,000). The first CM/GC project shall not exceed seventy million dollars (\$70,000,000) in construction costs, and no CM/GC project shall exceed one hundred million dollars (\$100,000,000) in construction costs.*

*(b) After the first project subject to the CM/GC method has begun, the department shall not initiate any other project using the CM/GC method until after a contract for construction of the first CM/GC project has been awarded.*

*(c) Before using the CM/GC method of project delivery, the commissioner shall send written notice to the chair of the transportation and safety committee of the senate and the chair of the transportation committee of the house of representatives. The written notice shall identify the project and the reasons for deciding to use the CM/GC method.*

**54-1-504. Multi-phase process for selecting the CM/GC that is the most responsive and responsible proposer. [Effective on July 1, 2014.]**

*If the commissioner determines that the CM/GC method of procurement is appropriate for a project, the commissioner shall establish a multi-phase process as described in subdivisions (1)-(4) to select the CM/GC that is the most responsive and responsible proposer:*

*(1) Phase 1 of the process is the appointment of the selection committee, as follows:*

*(A) For each request for proposal (RFP) for CM/GC services, the commissioner shall appoint a selection committee to evaluate and score all responsive proposals in accordance with the procedures established in the RFP;*

*(B) The selection committee shall have a total of eight (8) members. The commissioner shall appoint five (5) department employees to the selection committee based on their qualifications and experience, including at least one (1) employee who is a licensed professional engineer in this state;*

*(C) In addition, the commissioner shall appoint three (3) members who are not employees of the department, all of whom shall be residents of this state. At least one (1) member shall be appointed from and reside in each of the grand divisions of this state. At least one (1) of these three (3) members shall have a degree in banking, finance or accounting and a minimum of five (5) years of employment experience in a banking, finance or accounting position. Each of the other two (2) members shall have a minimum of ten (10) years of construction or highway engineering design experience, and at least one (1) of these two (2) members shall have a valid professional engineering license.*

*(2) Phase 2 of the process is the development and issuance of the request for proposals (RFP), as follows:*

*(A) The RFP used to solicit a CM/GC proposal shall be reviewed by the selection committee established under subdivision (1). Prior to the issuance of the RFP, the selection committee shall approve the proposed RFP indicating that the RFP complies with the requirements in this part, in a closed meeting that is not open to the public and by a majority vote;*

*(B) For the purposes of the pilot program, the RFP shall not require prior experience with any particular project delivery method as a condition for submitting a responsive proposal. Further, the RFP shall not solicit information concerning prior experience with any particular contract delivery method, and the RFP shall not give any credit or preference for any particular contract delivery method experience in the scoring of any proposal. The RFP shall include, but not be limited to, the following:*

*(i) The procedures for submitting proposals and the criteria for evaluating qualifications and the relative weight for each criterion as indicated in the technical score matrix, which shall be attached to the RFP;*

*(ii) The form of the contract to be awarded for pre-construction services;*

*(iii) A listing of the types and scope of pre-construction services that will be required;*

*(iv) The scope of the intended construction work, with a requirement that the CM/GC, if awarded the construction contract, shall complete at least thirty percent (30%) of the negotiated construction cost of the entire project internally. The cost for pre-construction services shall not be considered part of the thirty percent (30%) but may be considered a specialty item;*

*(v) Any budget limits for the construction project and the pre-construction services;*

*(vi) The method of payment and structure of fees for the pre-construction services;*

*(vii) A requirement that the proposer submit relevant information regarding any licenses, registration and credentials that may be required to construct the project, including information on the revocation or suspension of any license, registration or credential. A Tennessee contractor's license shall not be required to submit a proposal or to be considered for award of a contract for pre-construction services; provided, however, that a Tennessee contractor's license shall be required prior to the execution of any contract for pre-construction services or to construct the project;*

*(viii) A requirement that the proposer submit evidence that establishes the entity has the capacity to obtain the required bonding and insurance for the project;*

*(ix) A requirement that the proposer submit information concerning any debarment or default from a federal, state or local government project within the past five (5) years;*

*(x) A requirement that the proposer provide information concerning the bankruptcy or receivership of any member of the entity including information concerning any work completed by a surety;*

*(xi) A requirement that the proposing firm provide evidence that the proposing firm has actual experience in the successful construction of*

*other highway transportation projects, as well as the competency, capability and capacity to complete a project of similar size, scope or complexity; and further, the proposing firm may not rely on the construction experience of a subcontractor or other team member for the purpose of meeting this requirement;*

*(xii) An affidavit that shall be signed by each proposer competing for a CM/GC contract affirming that the company, its agents, subcontractors and employees have not violated the prohibitions described in subdivisions (3)(F) and (G); and*

*(xiii) A prohibition that excludes any person or firm that has received compensation for assisting the department in preparing the RFP from submitting a proposal in response to the RFP, or participating as a CM/GC team member;*

*(C) Once the selection committee has approved the RFP and determined that it complies with the requirements of this part, the RFP shall be published on the department's Internet web site, and may be advertised in a newspaper of general circulation in the region of the state where the work is to be performed and/or published in such other internet or print media of general circulation so as to afford an opportunity for qualified firms to be considered for award of the contract.*

*(3) Phase 3 of the process, which may be known as the "CM/GC Selection-Design Phase," is as follows:*

*(A) The department's RFP shall establish a procedure for the evaluation and selection of a CM/GC to perform pre-construction services and potentially construct the project. Members of the selection committee are to be instructed as to their responsibilities and duties, as established in this part, prior to their review or evaluation of the proposals;*

*(B) All proposals received by the department in response to the RFP, and any documents used by the selection committee to evaluate and score the proposals, shall remain confidential and not subject to disclosure to any proposer or to the public until after the department issues a written notice of award as provided in subdivision (3)(E);*

*(C) The RFP may provide for the selection committee to make an initial review and evaluation of interested proposers through a request for qualifications (RFQ), with a more detailed proposal to be submitted by a selected list of proposers, and it may provide for interviews or presentations. The RFP may also provide for a process by which members of the selection committee, through a department employee identified in the RFP as a point of contact, may request and obtain information on technical matters to assist them in the evaluation of proposals;*

*(D) Upon completion of the evaluation process, each member of the selection committee shall independently review and score the proposals. Each member shall score the proposals pursuant to the scoring matrix that the department provides in the RFP and based on the RFP's evaluation criteria. The scores will be tallied and averaged according to the procedure established in the RFP; provided, however, that the scores of the two (2) selection committee members giving the highest and lowest scores on a proposal shall be excluded when computing the average score for each proposal. Upon completion of the scoring, the proposals will be ranked in order of the highest aggregate score to the lowest aggregate score. The proposer whose proposal receives the highest aggregate score will be*

*considered the best-evaluated proposer;*

*(E) The proposals shall be submitted in rank order to the commissioner. The commissioner may either accept the selection committee's recommendation of the best-evaluated proposer, or the commissioner may reject all proposals and proceed with construction of the project through any lawful method for procuring a construction services contract. The department shall send all proposers a written notice of award to the best-evaluated proposer, or a written notice that all proposals have been rejected. If the department issues a written notice of award, the notice shall include a copy of the scores from each member of the selection committee for each RFP proposal;*

*(F) Throughout the selection process:*

*(i) The members of the selection committee shall not communicate with each other concerning their review or evaluation of the proposals;*

*(ii) Any entity that submits a proposal in response to the RFP, as well as their employees, agents and subcontractors, shall not communicate with any member of the selection committee, or with any employee or official of the department, concerning the review or evaluation of any proposal, except that a proposer may communicate with those department employees who are specifically listed in the RFP as appropriate points of contact. Any proposer's failure to comply with this restriction shall render said proposer's RFP response ineligible for selection;*

*(iii) To confirm that no member of the selection committee has been improperly influenced, prior to reviewing the RFP responses, each committee member must affirmatively complete an affidavit indicating that such member has not discussed the proposals or such member's review of the same with any other selection committee member, with any department employee other than those listed in the RFP as an appropriate point of contact, or with any of the proposers, their agents, employees or subcontractors;*

*(iv) Each member of the selection committee shall also be required to complete an affidavit stating that such member is not aware of having any conflict of interest, financial or otherwise, regarding the member's ability to fairly evaluate all proposals;*

*(G) Entities competing for a CM/GC contract are also prohibited from offering or paying a contingency fee of any type that is directly tied to specific actions or work designed to help the proposer obtain a contract through the CM/GC RFP process. The selected CM/GC firm shall complete an affidavit affirming this information before being awarded a contract. Falsely affirming that a contingency fee, associated with the CM/GC RFP process, was neither offered nor paid shall be grounds for debarment of the proposer under official compilation Rules and Regulations of the State of Tennessee, Chapter 1680-5-1, governing suspension and debarment for department contractors.*

*(4) Phase IV of the process, which may be known as the "CM/GC Selection-Construction Phase," is as follows:*

*(A) Once the design has been completed, or has been sufficiently developed to allow the CM/GC to prepare a proposed guaranteed maximum price for construction of the project, or a part of the project, the department shall conduct the steps described in subdivision (4)(B) before proceeding with any construction of the project;*

*(B) The department shall:*

*(i) Prepare and compile the contract plans, specifications, special provisions, and other requirements which will comprise the contract for construction of the project;*

*(ii) Prepare a detailed construction cost estimate to evaluate the appropriate price for construction of the project as designed; and*

*(iii) If directed by the commissioner, have an independent third-party estimator prepare a detailed construction cost estimate to confirm the appropriate price for construction of the project as designed;*

*(C) The department's detailed construction cost estimate, and any construction cost estimate prepared by an independent third-party estimator, shall not be disclosed to the CM/GC, and shall remain confidential and not subject to public disclosure until after award of the contract for construction of the project;*

*(D) The contract shall require the CM/GC to self-perform a portion of the construction work comprising at least thirty percent (30%) of the total cost for construction, excluding specialty items. The cost for pre-construction services shall not be considered part of the thirty percent (30%) but may be considered a specialty item;*

*(E) Based on the contract plans, specifications, special provisions, and other contract terms and conditions compiled by the department, the CM/GC shall prepare a guaranteed maximum price, including any authorized contingency, for construction of the project. When completed, the CM/GC's proposed GMP shall be submitted to the department for review. The CM/GC's proposed GMP shall otherwise remain confidential and not subject to public disclosure until after award of the contract for construction of the project;*

*(F) The department shall compare the CM/GC's proposed GMP with its own confidential construction estimate, and with any construction estimate prepared by an independent third-party estimator. If the GMP does not exceed the department's estimate, or the independent third-party estimate, by more than ten percent (10%), the commissioner may, but is not required to, award the contract for construction of the project to the CM/GC;*

*(G) If the commissioner rejects the proposed GMP, the department may continue to conduct contract discussions with the CM/GC to develop an acceptable GMP for the project as designed. Alternatively, the department may direct the CM/GC to provide additional pre-construction services as needed to assist in the further development of contract plans, terms, or specifications for the purpose of repeating the Phase IV process steps established in this subdivision (4);*

*(H) If the CM/GC and the commissioner are unable to reach agreement on the GMP, the commissioner may proceed with construction of the project through the low bid procurement process.*

**54-1-505. Protesting the award of a CM/GC contract. [Effective on July 1, 2014.]**

*(a) A proposer who participated in the CM/GC RFP process may protest the award of a CM/GC contract to the commissioner. The protest shall be submitted in writing within seven (7) calendar days after the proposer knows or should have known of the facts giving rise to the protest. In the case of a pending award, a stay of award may be requested. The commissioner or the commis-*

*sioner's designee has the authority to settle and resolve a protest.*

*(b) Upon receipt of the "notice of award" letter which will be sent to all proposers by email, facsimile or mail prior to awarding the contract to the recommended proposer, the proposers shall have seven (7) calendar days to review the procurement file and to file a protest. In no event shall any protest be allowed, however, more than seven (7) calendar days after the proposer knew or should have known of the facts giving rise to the protest. If no protest letter with a protest bond is received in accordance with the requirements described in this subsection (b), then the department shall proceed with the award. The protest procedures and protest bond requirements are as follows:*

*(1) The protester shall deliver by mail or hand delivery an original protest letter, manually signed in ink, with a protest bond to the commissioner within seven (7) calendar days after the proposer knew or should have known of the facts giving rise to the protest. The protest letter shall include the solicitation number, the reason or reasons for the protest, and the signature of an attorney or protesting party indicating that the signer has read the document, and that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, limit competition, or to cause unnecessary delay or needless increase in the cost of the procurement or of the litigation;*

*(2) The protest, and any review or appeal thereof, shall be based exclusively on the written record of the CM/GC procurement process described in § 54-1-504(2) and (3), unless there are specific factual allegations that, in the course of evaluating or scoring the proposals, the selection committee or a member thereof has engaged in unlawful conduct or conduct so arbitrary and capricious as to amount to an illegality, in which case evidence outside the written record may be submitted;*

*(3) The protest bond shall be in the amount of five percent (5%) of the department's estimate of the total project cost;*

*(4) If the protest is not resolved by mutual agreement, the protester may request that the matter be considered at a meeting with the state protest committee created in § 4-56-103. The protester shall be required to submit a letter of appeal to the commissioner of general services and the commissioner of transportation requesting a meeting with the state protest committee within seven (7) calendar days from the date of the final determination letter provided by the commissioner or the commissioner's designee. In the event that a letter of appeal is not received within the seven (7) calendar days, the department shall proceed with an award;*

*(5) If the protester submits a letter of appeal to the state protest committee within the seven (7) calendar days, the state protest committee shall hold a protest meeting and make a final determination in writing to the protester and the commissioner;*

*(6) The department shall hold the protest bond for at least eleven (11) calendar days after the date of the final determination by the commissioner or the commissioner's designee. If the protester appeals the commissioner's final determination to the state protest committee, the protest bond shall be held until the commissioner is instructed by the state protest committee to either keep the bond or return it to the protester. The protester shall be notified in writing of the decision to keep the protest bond or shall be sent the protest*

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*bond by certified mail; provided, however, that the bond may only be retained if the commissioner determines that there is substantial evidence in the record to establish that the protest was brought or pursued in bad faith, or that the protest does not state on its face a valid basis for protest;*

*(7) A decision rendered by the state protest committee may be appealed by filing a petition for a writ of certiorari with the Chancery Court of Davidson County within sixty (60) days of the state protest committee's final decision.*

**54-1-506. Debriefing on selection process. [Effective on July 1, 2014.]**

*After the protest period has expired, and the contract for pre-construction services has been awarded, the department's procurement files shall be subject to public inspection pursuant to § 10-7-504(a)(7), and the department shall within five (5) business days after the protest period has expired, provide any unsuccessful proposer with a debriefing on the selection process. The debriefing shall be provided within the earliest mutually convenient time after award of the contract. The debriefing shall be limited to discussion of the strengths and weaknesses of the proposal submitted by the unsuccessful proposer and shall not include specific discussion of any other firm's competing proposal.*

**54-1-507. Establishment of policies and promulgation of rules and regulations. [Effective on July 1, 2014.]**

*The department may establish agency policies and/or promulgate rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, in furtherance of this part*

**54-1-508. Termination of part — Legislative intent regarding proposals to reenact or extend part — Report to legislative committees. [Effective on July 1, 2014.]**

*This part shall terminate on July 1, 2019, unless re-enacted or extended by the general assembly prior to such date. It is the legislative intent that any such legislative proposals to re-enact or extend this part be referred to the transportation and safety committee of the senate and the transportation committee of the house of representatives. No later than February 1, 2019, the department shall submit a detailed report to the transportation and safety committee of the senate and the transportation committee of the house of representatives containing relevant data that shall include, but not be limited to, the estimated actual cost of each project upon completion, the estimated and actual time of completion, and the number and value of any change orders for the project*

**54-2-201. [Repealed.]**

**54-2-202. [Repealed.]**

**54-2-203. [Repealed.]**

**54-2-204. [Repealed.]**

**54-2-205. [Repealed.]**

**54-2-206. [Repealed.]**

**54-2-207. [Repealed.]**

**54-2-208. [Repealed.]**

**54-2-209. [Repealed.]**

**54-3-113. Pilot program.**

(a) This chapter shall be initially limited to a pilot program, as further provided in this section, to be conducted for the purpose of evaluating the feasibility of tolling as an additional method for funding the development of highways or other transportation-related facilities.

(b) The pilot program created by this chapter shall be limited to the following:

(1)(A) One (1) new highway project, including any bridges and other structures that may be necessary to complete the project; and

(B) One (1) major bridge project crossing a major river, together with any related highway facilities and structures needed to complete the project and give it logical termini; or

(2) Two (2) new highway projects, including any bridges and other structures that may be necessary to complete each project; or

(3) Two (2) major bridge projects crossing a major river, together with any related highway facilities and structures needed to complete each project and give it logical termini.

(c) It is the intent of the general assembly that the department shall proceed to identify and initiate the development of these pilot projects as soon as reasonably practical.

(d)(1) No pilot project shall be developed until the department conducts one (1) or more public hearings for the specific purpose of receiving public comments concerning tolling as an alternative means of funding or financing bridges or highways within the state and until the department submits a written report, reviewing the public comments, to the chairs of the finance, ways and means committees of the senate and of the house of representatives and to the chairs of the transportation and safety committee of the senate and transportation committee of the house of representatives.

(2) No pilot project shall be developed by the department without the prior approval of the general assembly as provided in § 54-3-102(b).

(e) The department shall not develop any tollway project or toll facility project that is not within the pilot program created in this section until after the general assembly has expressly authorized the department to proceed with additional tollway projects and toll facility projects.

**54-5-114. Notice for bids — Advertising — Preparing and filing bids — Waiver.**

(a) The department, before making contracts on its own behalf, or when acting as an agent, shall advertise for bids at least two (2) weeks prior to the date set for receiving bids by publishing a written notice on the department's

Internet web site. The department may advertise for bids by publishing notice in a newspaper located in the county where the money is to be expended, in one (1) of the widely circulated daily newspapers in the grand division of the state where the work is to be done, or in other Internet or print media as the department may deem appropriate or necessary. Funding allocated by the department for purchasing advertising in a county having a population greater than two hundred fifty thousand (250,000), according to the 1990 federal census or any subsequent federal census, and in counties located in rural west Tennessee, may be expended to purchase advertisements in one (1) or more newspapers published primarily for distribution within the county's African-American community.

(b) The notice shall describe the work to be performed and shall enable the bidders to prepare their bids. All bids must be sealed and filed with the commissioner or the authorized agent of the department at the place designated in the notice on or before the time fixed in the notice.

(c) The requirements of this section may be modified by the department in order to conform to any federal requirements that may accompany federal funds.

(d) The requirements of this section may be waived as provided in § 54-1-135.

#### **54-5-133. Eradication and control of noxious weeds.**

The commissioner shall adequately eradicate or control, or both, by chemical or other means, noxious weeds growing on state highway rights-of-way whenever areas adjacent to the rights-of-way are determined by the commissioner of agriculture, in accordance with § 43-1-106, to be row crop areas or grassland areas.

#### **54-5-145. Definition of driver under the influence — Limitation of liability for accidents in road construction zones.**

(a)(1) In this subsection (a), "driver under the influence" means a driver who was under the influence of any intoxicant, marijuana, narcotic drug, or drug producing stimulating effects on the central nervous system, or the alcohol concentration in such person's blood or breath was eight-hundredths of one percent (.08%) or more in violation of title 55, chapter 10, part 4.

(2) In a civil action for the death of or injury to a person, or for damage to property, against the department of transportation or its agents, consultants, or contractors for work performed on a highway, road, street, bridge, or other transportation facility when the death, injury, or damage resulted from a motor vehicle crash within a construction zone in which the driver of one (1) of the vehicles was under the influence as defined in subdivision (a)(1), or one (1) of the drivers was convicted of reckless driving in violation of § 55-10-205, and the driver's reckless driving or driving under the influence was a cause in fact and proximate cause of the accident, then it is presumed that the department of transportation, its agents, consultants, or contractors, are not the cause in fact and proximate cause of the accident and any death, injury, or damage resulting from the accident. This presumption can only be overcome if the malicious, intentional, fraudulent or reckless misconduct of the department of transportation, or of its agents, consultants, or contractors, was a proximate cause of such person's death, injury, or

damage.

(b)(1) A contractor who constructs, maintains, or repairs a highway, road, street, bridge, or other transportation facility for the department of transportation is not liable to a claimant for personal injury, property damage, or death arising from the performance of such construction, maintenance, or repair if, at the time of the personal injury, property damage, or death, the contractor was in compliance with contract documents material to the condition that was the proximate cause of the personal injury, property damage, or death.

(2) The limitation on liability contained in this subsection (b) does not apply when a proximate cause of the personal injury, property damage, or death is a latent condition, defect, error, or omission that was created by the contractor and not a defect, error, or omission in the contract documents; or when the proximate cause of the personal injury, property damage, or death was the contractor's failure to perform, update, or comply with the maintenance of traffic safety plan as required by the contract documents.

(3) The contractor has a duty to provide the department of transportation with written notice of any apparent error or omission in the contract documents, and nothing in this subsection (b) shall be interpreted or construed as relieving the contractor of any obligation to provide the department of transportation with written notice of any apparent error or omission in the contract documents.

(4) Nothing in this subsection (b) shall be interpreted or construed to alter or affect any claim of the department of transportation against such contractor.

(5) This subsection (b) does not affect any claim of any entity against such contractor, which claim is associated with such entity's facilities on or in department of transportation roads or other transportation facilities.

(c)(1) In all cases involving personal injury, property damage, or death, a person or entity who contracts to prepare or provide engineering plans for the construction or repair of a highway, road, street, bridge, or other transportation facility for the department of transportation shall be presumed to have prepared such engineering plans using the degree of care and skill ordinarily exercised by other engineers in the field under similar conditions and in similar localities and with due regard for acceptable engineering standards and principles if the engineering plans conformed to the department of transportation's design standards material to the condition or defect that was the proximate cause of the personal injury, property damage, or death.

(2) This presumption can be overcome only upon a showing of the person's or entity's gross negligence in the preparation of the engineering plans and shall not be interpreted or construed to alter or affect any claim of the department of transportation against such person or entity.

(3) The limitation on liability contained in this subsection (c) shall not apply to any hidden or undiscoverable condition created by the engineer.

(4) This subsection (c) does not affect any claim of any entity against such engineer or engineering firm, which claim is associated with such entity's facilities on or in department of transportation roads or other transportation facilities.

(5) The engineer has a duty to provide the department of transportation with written notice of any apparent error or omission in the department of

transportation's design standards, and nothing in this subsection (c) shall be interpreted or construed as relieving the engineer of any obligation to provide the department of transportation with written notice of any apparent error or omission in the department of transportation's design standards.

(6) Nothing in this subsection (c) shall be interpreted or construed to alter or affect any claim the department of transportation has against such engineer.

(d) In any civil action for death, injury, or damages against the department of transportation or its agents, consultants, engineers, or contractors for work performed on a highway, road, street, bridge, or other transportation facility, if the department, its agents, consultants, engineers, or contractors are immune from liability pursuant to this section or are not parties to the litigation, they may not be named on the jury verdict form or be found to be at fault or responsible for the injury, death, or damage that gave rise to the damages.

**54-5-207. Authority of commissioner upon failure of municipality to enter into or abide by agreement concerning acquisition and use of lands for streets.**

In the event any municipality fails or refuses to enter into an agreement within thirty (30) days after the agreement has been submitted by the commissioner to the governing body of the municipal corporation, or fails or refuses to abide by or perform an agreement concerning the acquisition and use of lands for streets needed for the interstate and national defense highway system, and the commissioner decides that the highway and street program is being delayed, impaired, obstructed, or impeded in any manner, the commissioner is authorized and empowered to:

(1) Lay out, locate and construct streets, controlled streets and access or connecting streets within the municipality to become a part of the interstate and national defense system of highways by designation of the commissioner;

(2) Designate lands already dedicated to the use of the traveling public as a part of the interstate and national defense highway system; and

(3)(A) Acquire interests in lands occupied by publicly and privately owned utilities;

(B) Require the adjustment or relocation of the utility facilities;

(C) Enter into contracts relating to the utilities; and

(D) Maintain actions or suits in the courts when necessary so as to lay out, locate or construct streets designated as portions of the interstate and national defense system of highways.

**54-5-701. [Repealed.]**

**54-5-702. [Repealed.]**

**54-5-708. Directional signs denoting certain educational institutions.**

It may be the duty of the department to implement a directional signing program for all institutions of higher learning, state colleges of applied technology, and state-operated special schools throughout the state, as follows:

(1) Institutions that are located within ten (10) miles of an interchange on the federal-aid interstate system of highways shall be signed on the

interstate highway system; provided, that all state community colleges may be signed on the highway system if the colleges are within nineteen (19) miles of an interchange on the highway system. Each institution meeting this criterion shall be signed at only one (1) interchange and shall be signed at the closest location, except where more than two (2) destinations are required to be signed at the same interchange. When this condition occurs, the two (2) closest institutions to the interchange shall be signed, with the remaining institution or institutions being signed at the second closest interchange;

(2) Institutions that are not signed on the federal-aid interstate system of highways shall be signed at the road entering the state highway system nearest the institution; and

(3) All signing shall meet federal highway administration requirements regarding the number of lines of sign legend, sign location and spacing.

**54-5-1003. [Repealed.]**

**54-5-1103. Administrative service contracts — Bidding lease payments.**

(a)(1) Except as provided in this section, the department shall enter into contracts for the administration of specific service signs. The department may, however, carry out the administration of specific service signs to provide continuity of the program in the case of default of an administrative contractor, or in the interim period between administrative contracts, and to fulfill statutory or regulatory changes made to the program during an existing administrative contract where the administrative contractor is unwilling to provide for statutory or regulatory additions to the program under the terms of the existing contract, and other terms that the department deems appropriate.

(2) Contracts for administrative services include the marketing, management, and maintenance of specific service signs. Any administrative services contract awarded must include provisions requiring an appropriate corporate surety performance bond, security or cash.

(b) Nothing in this section shall be construed as preventing the commissioner from determining whether provision of administrative services for the entire state should be the basis for bids, or whether the provision of the services for segments of the state should be the basis for bids.

(c) Notwithstanding § 12-3-102(a)(8), any contract to perform administrative services shall be awarded to the contractor whose proposal offers the best value for the state rather than the least cost to the retail user of the signs. In determining the best value for the state, the department may consider:

(1) The quality of service offered;

(2) The contractor's overall qualifications to partner with the department. This includes determining fair market value of advertising space and establishing a fee structure that provides a combination of revenue to the department and fair pricing to the advertisers;

(3) The contractor's financial resources and ability to perform;

(4) The percentage of revenue sharing provided to the department by the contractor; and

(5) Any other factor the department considers relevant.

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**54-5-1104. [Repealed.]**

**54-5-1105. Award of contracts to Tennessee based enterprises.**

(a) Notwithstanding any law or this part to the contrary, all contracts entered into by the state pursuant to this part shall be awarded to Tennessee-based business enterprises.

(b) [Deleted by 2013 amendment, effective July 1, 2013.]

**54-5-1106. Nonconforming billboards.**

No lease payments, royalty payments, or funds of any type received by the state pursuant to this part shall be used for the purchase of nonconforming billboards or used as payment for the taking or removal of nonconforming billboards.

**54-5-1109. [Repealed.]**

**54-5-1110. Businesses qualified prior to July 1, 2001 — Competitive selection process.**

(a) Those food service businesses qualified under this program as of July 1, 2001, and that continue thereafter to be qualified and pay all fees required, shall not be replaced by any business that becomes qualified after July 1, 2001.

(b) Notwithstanding subsection (a), if the department elects to award advertising space based on a competitive selection process, the food service businesses qualified under the program as of July 1, 2001, will need to compete in such a competitive selection process and may be replaced by any business that submits a more competitive proposal under such a process.

**54-5-1301. Establishment of program — Contracts.**

(a)(1) The department of transportation is authorized to conduct a tourist oriented directional signs program, referred to as TODS, within the right-of-way of state highways by either the entry into administrative service and construction contracts or by the administration of the program with department personnel, at the option of the department.

(2) Contracts for administrative and construction services shall be subject to former §§ 12-4-109 — 12-4-111 [See the Compiler's Notes]. Contracts for administrative or construction services shall include provisions requiring appropriate corporate surety performance bond, security or cash. Contracts for the services shall be awarded based on an objective, competitive bid basis to the lowest responsible bidder.

(3) Should the commissioner determine that it is in the best interest of the state for the department to conduct the program set forth in this part through the award of an administrative service or construction contract or contracts, the scope of the services provided by the contracts shall be at the discretion of the commissioner.

(b) TODS shall be available to lawful cultural, historical, recreational, agricultural, educational, or entertaining activities, state and national parks, and commercial activities that are unique and local in nature, and the major portion of whose income or visitors are derived during its normal business season from motorists not residing in the immediate area of the activity.

**54-5-1304. Competitive bidding.**

With respect to a TODS sign, the department shall not enter into a contract for the procurement of signs or other goods or for contracts for services unless the contract is objectively and competitively bid, pursuant to former § 12-3-102(a)(8). The department shall not use the request for proposals (RFP) procedure in the contracting process. The signs shall be subject to the requirements of part 11 of this chapter.

**54-7-102. Applicability of chapter.**

This chapter applies to all counties of the state, except for those excluded by Chapter 801 of the Public Acts of 1976, and counties with a charter or a metropolitan form of government, unless the charter of such county provides for the application of this chapter.

**54-7-104. Tennessee highway officials certification board.**

(a) There is created and established the Tennessee highway officials certification board, referred to as the “board,” which shall be composed of five (5) members as follows:

- (1) One (1) member appointed by the secretary of state;
- (2) One (1) member appointed by the director of the Tennessee Chapter of the American Public Works Association;
- (3) One (1) member appointed by the governor from a list of nominees submitted by the representative professional engineering society of the state;
- (4) One (1) member appointed by the comptroller of the treasury; and
- (5) One (1) member appointed by the executive director of the Tennessee County Services Association.

(b) The board has and shall exercise the power to review the qualifications of all candidates for both elected and appointed positions as chief administrative officer of the highway department. Candidates for this office in counties where the position is filled by popular election shall file affidavits and other evidence the board requires with the board not later than fourteen (14) days prior to the qualifying deadline for candidates in the election. After review of the applicable qualifications and standards, the board shall certify to the coordinator of elections that a candidate’s qualifications are acceptable prior to the candidate’s name being placed on the ballot. The coordinator of elections shall forward the certification to the appropriate county election commission. A certificate of qualification from the board shall be filed with the candidate’s qualifying petition prior to the qualifying deadline. Notwithstanding any law to the contrary, votes for write-in candidates, whether in a primary or general election, shall only be counted for an individual who has been certified by the board prior to the date of the election. Persons wishing to receive a party nomination or to be elected by write-in ballot must file with the board affidavits and other evidence the board requires not later than sixty-four (64) days prior to the election. Candidates for chief administrative officer of the highway department in counties where the position is appointed shall, prior to their appointment to the office, file with the board evidence satisfactorily demonstrating that they meet the qualifications to hold the office. However, in any county, pursuant to subsection (h), that has established by private act more

stringent qualifications and standards than those set forth in subsection (g), and that has an appointed chief administrative officer, candidates shall submit evidence of their qualifications to the local appointing authority and shall not be required to submit evidence of their qualifications to the board.

(c) Members of the board shall serve for a term of four (4) years beginning with the term commencing on July 1, 2013. The appointee representing the secretary of state shall serve as chair of the board. Upon the death, resignation, or removal of any appointive member, a replacement shall be appointed by the party representing the same area of interest as the member whose position has been vacated to fill the unexpired term of the member.

(d) No chief administrative officer of a highway department shall be appointed to the board if that person may become subject to reelection or reappointment as a chief administrative officer during that person's term of service on the board.

(e) The board shall only meet as is necessary to fulfill its duties. All materials or correspondence submitted to the board shall be received through the office of the coordinator of elections, who shall forward the materials or correspondence to the board. The board shall keep complete and accurate records of the proceedings of all its meetings. A copy of records of all proceedings shall be kept on file in the office of the coordinator of elections and open to public inspection.

(f) Subject to the approval of the secretary of state, the board may promulgate rules to be followed by persons wishing to submit themselves for certification as qualified to seek the office of the chief administrative officer of the highway department. The board shall submit any promulgated rules pertaining to the qualifications for the office of chief administrative officer to the administrator of elections of each affected county election commission. The county election commission shall publish such rules in a local newspaper with general circulation in the county at least sixty (60) days before the qualifying deadline for either the primary or general election, or appointment by the legislative body of the county.

(g) In each county, in order to qualify for the office of the chief administrative officer of the highway department, a person shall:

- (1) Be a graduate of an accredited school of engineering, with at least two
- (2) years of experience in highway construction or maintenance;
- (2) Be licensed to practice engineering in Tennessee; or
- (3) Have had at least four (4) years' experience in a supervisory capacity in highway construction or maintenance; or a combination of education and experience equivalent to subdivision (g)(1) or (g)(2), as evidenced by affidavits filed with the board.

(h) In no event shall the chief administrative officer have less than a high school education or a general equivalency diploma (GED). A county may, by private act, require more stringent qualifications and standards than those set forth in subsection (g) for persons to qualify for the office of the chief administrative officer of such highway department. Any county that establishes more stringent qualifications and standards by private act shall send a copy of such private act to the board.

(i) Incumbent chief administrative officers in office on December 31, 2012, who have met the qualifications for the office of chief administrative officer applicable to them in effect at the time of their last election shall be able to succeed themselves in office without meeting the qualifications set forth in this

section for as long as such incumbents continuously hold office. If such incumbent leaves office for any reason and then subsequently is elected or appointed to the office of chief administrative officer, such incumbent shall then be subject to the qualifications set forth in this section.

(j) Satisfactory evidence of graduation from an accredited school of engineering shall be in the form of a diploma, transcript or other official documentation. Evidence of a candidate's engineering licensure shall only be deemed to be satisfied if the candidate can provide the board with a copy of the candidate's engineering license, including the candidate's license number. Any provision in this section requiring a chief administrative officer to have a high school diploma or GED shall only be deemed to be satisfied if the candidate can demonstrate that the candidate has obtained a high school diploma or its equivalent in educational training as recognized by the state board of education by providing the board with the candidate's diploma, GED certificate or other official documentation.

**54-7-105. Term of office.**

Elected or appointed chief administrative officers shall serve a term of four (4) years. Elected chief administrative officers shall take office on September 1, following their election.

**54-7-109. Duties of chief administrative officer.**

(a) The chief administrative officer shall be the head of the highway department and shall have general control over the location, relocation, construction, reconstruction, repair and maintenance of the county road systems of the county, including roads designated as county roads under § 13-3-406 and including bridges and ferries, but not including roads and bridges under the supervision of the department of transportation or a municipality.

(b) It is the duty of the chief administrative officer to employ qualified administrative personnel as required to handle all administrative functions, including maintenance of financial records, inventory of equipment, supplies, and materials, preservation of maintenance records, maintenance of the official county road list, and all other functions necessary for the operation of the highway department.

(c) The chief administrative officer is authorized to determine the total number of employees of the highway department, to determine personnel policies, hours of work, to establish job classifications, and to establish policies and wages within the classifications. The compensation established by the chief administrative officer should be in keeping with the compensation paid for similar services in the county and surrounding area.

**54-7-110. Employment of legal counsel.**

(a) The chief administrative officer shall be empowered to employ legal counsel or to solicit the use of legal counsel retained by the county to prosecute or defend litigation caused by or necessary to the operation of the county highway department.

(b) [Deleted by 2012 amendment, effective January 1, 2013.]

**54-7-111. Annual work program — Priorities for proposed work.**

(a) The chief administrative officer shall prepare and submit to the county legislative body and to the department of transportation an annual work program to be financed under the state-aid highway system program.

(b) The priorities for proposed work contained in the annual work program shall be established, taking into consideration the degree of deficiencies in the structural condition, capacity and safety of existing roadway, traffic volume and desirable level of service necessary for schools, religious institutions, industry, recreational facilities and other major uses.

**54-7-113. Receipt and disbursement of funds — Public advertisement and competitive bidding — Chart of accounts.**

(a) All funds received by any person for the county for road or highway purposes shall be promptly deposited with the county trustee and shall be expended only upon a disbursement warrant drawn on the trustee in accordance with law.

(b) Expenditures of funds for the operation of the county road department shall be made within the limits of the approved budget and the appropriations made for the department, in accordance with law.

(c)(1) Except as provided in subdivision (c)(3), all purchases by or for a county road department or by a chief administrative officer shall be by public advertisement and competitive bid, except as follows:

(A) Purchases costing less than ten thousand dollars (\$10,000); provided, that this exemption shall not apply to purchases of like items that individually cost less than ten thousand dollars (\$10,000), but that are customarily purchased in lots of two (2) or more, if the total purchase price of the items would exceed ten thousand dollars (\$10,000) during any fiscal year;

(B) Repair of heavy road building machinery or other heavy machinery for which limited repair facilities are available;

(C) Purchases of any supplies, materials, or equipment for immediate delivery in actual emergencies arising from unforeseen causes, including delays by contractors, delays in transportation, and unanticipated volume of work; but emergencies shall not include conditions arising from neglect or indifference in anticipating normal needs. A report of emergency purchases shall be kept, specifying each purchase, the amount paid, the items purchased, from whom the items were purchased, and the nature of the emergency; and

(D) All purchases costing less than ten thousand dollars (\$10,000) by or for a county road department or by a chief administrative officer may be made in the open market without newspaper notice, but shall, wherever possible, be based on at least three (3) competitive bids.

(2) Except as provided in subdivision (c)(3), all leases or lease-purchase arrangements requiring payments of ten thousand dollars (\$10,000) or more, or that are made or are automatically extendable, for periods of more than ninety (90) days, shall be entered into only after public advertisement and competitive bidding.

(3) This subsection (c) does not have the effect of repealing existing statutes, including private acts, that establish purchasing provisions for a county road department; but no county road department shall be required to publicly advertise and competitively bid purchases of ten thousand dollars

(\$10,000) or less even if the bids are now required by public or private act.

(d) A chart of accounts shall be kept by the chief administrative officer in conformity with a uniform chart of accounts developed and prescribed by the comptroller of the treasury in accordance with §§ 5-8-501 — 5-8-503.

**54-7-114. [Repealed.]**

**54-7-201. Obstruction of roads, bridges and ditches — Penalty — Removal.**

(a) The chief administrative officer is authorized to remove or cause to be removed any fence, gate, or other obstruction from the roads, bridges and ditches of the county and to clean out and clear all fences and ditches along or adjacent to the county roads.

(b) Any person who places or maintains an obstacle or obstruction upon the right-of-way of any county road and refuses to remove the obstacle or obstruction upon direction of the chief administrative officer to do so commits a Class C misdemeanor.

(c) It is a Class C misdemeanor to place or cause to be placed any obstruction upon the right-of-way or in the ditches along any county road except that transmission lines, telephone or telegraph lines or poles may be placed on and along the right-of-way of any county road under the direction and with the permission of the chief administrative officer.

(d) [Deleted by 2013 amendment, effective July 1, 2013.]

(e) Notwithstanding any law to the contrary, this section shall apply to all counties.

**54-7-202. Private use of equipment and materials prohibited — Penalty — Work for governmental entities authorized.**

(a) The chief administrative officer shall not authorize or knowingly permit the trucks or road equipment, the rock, crushed stone or any other road materials to be used for any private use or for the use of any individual for private purposes, and the chief administrative officer's failure to see that this subsection (a) is enforced is a Class C misdemeanor.

(b) Any employee of the county road department who uses any truck or any other road equipment or any rock, crushed stone or other road material for that employee's personal use, or sells or gives those things away, shall be immediately discharged.

(c) No truck or other road equipment or any rock, crushed stone or any road material shall be used to work private roads or for private purposes of owners of the roads.

(d) Neither the chief administrative officer nor any other official or employee of the county may use any county vehicle, equipment, supplies or road materials for other than official county road purposes; however, the county governing body has the authority to authorize the county road department to perform work for other governmental entities; provided, that the cost of the projects so authorized is to be reimbursed to the county road department.

(e) A violation of this section is a Class C misdemeanor. Each separate use of the same for other than authorized purposes constitutes a separate offense and is subject to a separate punishment.

(f) Any person whose property is improved by having road material placed

on the property in violation of this section shall be liable to suit for the value of the improvement. Any amounts recovered, including all legal fees and other recovery costs, shall go to the county road department.

(g)(1) Notwithstanding this section or any other section to the contrary, at the written request of the appropriate United States postal authority or the appropriate school board or education department, the county may use county vehicles, equipment and supplies to maintain areas for the purpose of providing public school buses and postal vehicles with a route and a turnaround area, even though the areas may not be on the official county road map or part of a public road right-of-way for which the county is responsible. The county shall not maintain the area if it will not be used for that purpose. The county shall obtain written permission from the owner of any property proposed to be used as a turnaround area prior to commencing any work on that property.

(2) The county road department and the appropriate postal authority or school board or education department shall determine prior to commencement of the project whether all or part of the cost of the paving will be reimbursed to the road department.

(3) [Deleted by 2012 amendment, effective January 1, 2013.]

#### **54-7-206. Theft or embezzlement by chief administrative officer.**

(a) Any theft by a chief administrative officer, either directly or indirectly, of county highway or road money shall be punished under § 39-14-105.

(b) If any chief administrative officer charged with the collection, safekeeping, transfer, or disbursement of money or property belonging to the county highway department uses or diverts any part of the money or property by loan, investment, or otherwise, without authority of law, or converts any part of the money or property to the chief administrative officer's own use in any way whatsoever, the chief administrative officer commits embezzlement, and for every act, upon conviction, shall be punished as in the case of larceny, and in addition shall be required to pay to the court an amount equal to the amount embezzled. The amount shall be forwarded by the clerk to the county highway department.

#### **54-7-207. Offense of damaging county highways structures.**

(a)(1) As used in this subsection (a), "county highway structure" includes any county highway, highway facility, building, bridge, overpass, tunnel, barricade, fence, wall, traffic control device, right-of-way, sign or marker of any nature whatsoever erected upon or maintained within or adjacent to a county highway or the county highway right-of-way.

(2) It is an offense for any person who is not authorized to construct or repair a county highway structure to knowingly carve upon, write, paint or otherwise mark upon, deface, rearrange, or alter any county highway structure.

(3) It is an offense for any person who is not authorized to construct or repair a county highway structure to knowingly, in any manner, destroy, damage, knock down, mutilate, mar, steal or remove any county highway structure.

(4) A violation of subdivision (a)(2) or (a)(3) is a Class A misdemeanor.

(5) In addition to any criminal penalty provided by law for a violation of subdivision (a)(2) or (a)(3), there is created a separate civil cause of action for

the cost of any damage resulting from such prohibited action.

(6) There is created a civil cause of action for the cost of any damage done whenever a person negligently damages any county highway structure.

(7) Criminal actions prosecuted pursuant to this subsection (a) shall be brought by the district attorney general of the judicial district in which the damage occurred. Civil actions instituted pursuant to this subsection (a) shall be brought by the county attorney or an attorney employed by the chief administrative officer of the county highway department.

(b)(1) Any person who reports information to a law enforcement officer that leads to the apprehension and conviction of a person for a violation of this section shall receive a reward of two hundred fifty dollars (\$250). The county where the conviction occurs shall provide the reward money from the proceeds of the fines collected under this section.

(2) The proceeds from the fines imposed for violations of this section shall be collected by the respective court clerks and then deposited in a dedicated county fund. The fund shall not revert to the county general fund at the end of a fiscal year but shall remain for the vandalism enforcement rewards established in subdivision (b)(1).

(3) Each county shall expend the funds generated by the fines provided for in this section by appropriation for the vandalism enforcement rewards. Excess funds, if any, may be expended for litter control programs on adoption of an appropriate resolution by the county legislative body.

(c) Notwithstanding any law to the contrary, this section shall apply to all counties.

**54-8-101. [Repealed.]**

**54-8-102. [Repealed.]**

**54-8-103. [Repealed.]**

**54-8-104. [Repealed.]**

**54-8-105. [Repealed.]**

**54-8-106. [Repealed.]**

**54-8-107. [Repealed.]**

**54-10-103. Classification of roads.**

(a) The county legislative bodies shall classify the public roads in the counties, but shall not divide them into more than four (4) classes of widths, as described in § 54-10-104, and shall specify in each class the width of roadbed between ditches and the distance between fences, which dimensions shall be within § 54-10-104, and which classification shall be entered of record in the office of the county clerk in a book to be kept for that purpose.

(b) Before the county legislative body may classify a road as provided in this section, the chief administrative officer of the county highway department shall submit a listing of all county roads to the county legislative body. The listing shall include a summary of all changes from the road listing submitted previously. The summary shall provide the road name, date the change was

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approved by the county legislative body and the reason for the change, including, but not limited to, opening, closing, reduction or extension in length, or correction of error. The chief administrative officer of the county highway department shall also include recommendations for classifying the roads.

**54-10-108. [Repealed.]**

**54-10-109. [Repealed.]**

**54-10-110. [Repealed.]**

**54-11-206. [Repealed.]**

**54-11-308. Commissioner of transportation authorized to acquire and operate ferries connecting state roads — Operation of other ferries limited.**

(a) The commissioner of transportation has the power to acquire by donation, purchase, or exercise of the power of eminent domain under the general law the assets of any ferry service business operating as a connection between state roads and is authorized to operate the business as a function of the department.

(b) The department may continue to operate any ferries now operated by the department, but in the future shall only operate ferries connecting state roads.

(c) The department may discontinue any ferry service business when it is no longer financially feasible, on reasonable public notice, except the department shall continue to operate the Cumberland City ferry or, in the alternative, arrange for and cause to be implemented another method for its continued operation by another public body.

(d)(1) The commissioner shall charge reasonable tolls for the use of a ferry service business based on a user classification schedule. School buses and state and county vehicles shall be exempt from the payment of the toll. The fee charges that are established for the Cumberland City ferry shall provide that the fee shall not exceed seventy-five cents (75¢) per day for local residents who use the ferry.

(2) As used in subdivision (d)(1), "local residents" includes residents of Stewart, Montgomery, and Houston counties.

(e) [Deleted by 2013 amendment, effective July 1, 2013.]

**54-11-309. Limitations on ferriage rates — Application for waivers.**

(a) Except as otherwise provided in subsection (b), no person shall charge as ferriage on any stream on any highway included in the state highway system or maintained in whole or part by the department of transportation more than the rate fixed as follows:

Automobile and passengers .....	\$2.00
Person, each, on foot .....	0.50
Truck or bus (one (1) ton capacity and under) and driver .....	2.00
Truck or bus (one (1) ton capacity and over) and driver .....	4.00
Automobile trailer .....	1.50
Truck trailer or bus trailer .....	3.00

Motorcycle and driver ..... 2.00

(b) Upon application submitted to the department requesting a waiver of the maximum rate fixed within subsection (a), the commissioner may fix a maximum rate in excess of that fixed within subsection (a). Any maximum rate fixed by the commissioner pursuant to this subsection (b) shall be promulgated as a rule in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. In promulgating any such rule, the commissioner shall give due consideration to:

(1) The public's need for adequate and efficient ferriage service at a reasonable and prudent cost; and

(2) The ferry operator's need of revenues sufficient to enable the operator, using honest, economical, and efficient management, to provide the ferriage services and to earn a reasonable profit.

**54-12-204. Classification according to percentage of benefits — Remains basis unless revised.**

(a) In making the estimate and apportionment pursuant to § 54-2-203 [repealed], the lands receiving the greatest benefit shall be marked on a scale of one hundred (100), and those benefited in a less degree shall be marked with a percentage of one hundred (100) as the benefit received bears in proportion to the lands receiving the greatest benefit.

(b) This classification, when finally established, shall remain a basis for all future assessments connected with the objects of the road improvement district, unless the monthly county court, for good cause, shall authorize a revision of the classification.

**54-13-101. Private and local improvements authorized by county legislative body.**

The county legislative body may provide for making private and local improvements, within the limits of the county, that are contemplated by article XI, §§ 9 and 10 of the Tennessee Constitution under restrictions, limitations, and conditions that in its discretion seem right and proper, such as public roads, and the like.

**54-13-104. [Repealed.]**

**54-13-201. [Repealed.]**

**54-13-202. [Repealed.]**

**54-13-203. [Repealed.]**

**54-13-204. [Repealed.]**

**54-13-205. [Repealed.]**

**54-13-206. [Repealed.]**

**54-13-207. [Repealed.]**

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**54-13-208. [Repealed.]**

**54-13-209. [Repealed.]**

**54-13-210. [Repealed.]**

**54-13-211. [Repealed.]**

**54-13-212. [Repealed.]**

**54-13-301. [Repealed.]**

**54-13-302. [Repealed.]**

**54-13-303. [Repealed.]**

**54-13-304. [Repealed.]**

**54-13-305. [Repealed.]**

**54-13-306. [Repealed.]**

**54-13-307. [Repealed.]**

**54-13-308. [Repealed.]**

**54-13-309. [Repealed.]**

**54-13-310. [Repealed.]**

**54-13-311. [Repealed.]**

**54-13-312. [Repealed.]**

**54-13-313. [Repealed.]**

**54-13-314. [Repealed.]**

**54-13-315. [Repealed.]**

**54-13-316. [Repealed.]**

**54-13-317. [Repealed.]**

**54-13-318. [Repealed.]**

**54-13-319. [Repealed.]**

**54-13-320. [Repealed.]**

**54-13-321. [Repealed.]**

**54-16-112. Underground fiber optic cable facilities — Intelligent transportation system and radio communications facilities — Rules and regulations — Setting rate of compensation — Creation of advisory board — Construction and application of section — Restrictions on use of underground fiber optic cable lines and related facilities.**

(a) The department of transportation may issue non-exclusive permits, on a competitively neutral and non-discriminatory basis, allowing the longitudinal installation of underground fiber optic cable lines and related facilities within the rights-of-way of controlled-access highways on the state highway system or federal interstate highway system, or both, subject to reasonable and appropriate regulations to protect the public safety and welfare.

(b)(1) Notwithstanding any other provision of law to the contrary, as a prerequisite to the issuance of a permit under subsection (a), the department has the authority to require a one-time payment of fair and reasonable compensation for use of the right-of-way. This compensation shall be in addition to any administrative fees or charges the department may require for the issuance of a permit. The department shall receive this compensation as determined by the advisory board in accordance with subsection (d). Any compensation received is to be used by the department solely for constructing, operating and maintaining an intelligent transportation system and radio communications facilities for use by the state.

(2) As used in this section, "intelligent transportation system" means communications, computer and information systems and other technology utilized by the department to manage the flow of traffic on the controlled-access highways on the state highway system or federal interstate highway system, or both.

(c) The commissioner of transportation has the authority to promulgate and enforce rules and regulations to carry out this section, except for the setting of the rate of compensation. The rate of compensation shall be set by the advisory board established pursuant to subsection (d).

(d)(1) There is created an advisory board to establish fair, reasonable and non-discriminatory compensation for the use of the right-of-way under this section. In determining the rate and method of the compensation, the board shall provide for the option, to be exercised at the discretion of the department, of payment of the compensation by the providing of telecommunications facilities and services, and for a method of valuation of such in-kind payments.

(A) The advisory board shall consist of the governor or the governor's designee, the commissioner of finance and administration, the comptroller of the treasury, the state treasurer, the secretary of state, the commissioner of transportation, and three (3) representatives of the telecommunications industry.

(B) The governor shall appoint one (1) telecommunications industry representative representing a facilities-based competing telecommunications services provider doing business in the state or a franchised cable company doing business in the state; the speaker of the senate shall appoint one (1) telecommunications industry representative representing an incumbent local exchange carrier doing business in the state; and the speaker of the house of representatives shall appoint one (1) telecommunications industry representative representing an inter-exchange carrier

doing business in the state.

(C) To ensure that competitive interests are represented on the advisory board, the three (3) representatives of the telecommunications industry shall at no time be employed by or otherwise related to the same person or any affiliate of the person. In the event that a conflict arises under this subdivision (d)(1)(C) because of a merger, acquisition or other transaction between two (2) or more persons within the telecommunications industry, then the appointing authorities of one (1) or more of the affected representatives shall appoint different representatives to avoid the conflict. For purposes of this subdivision (d)(1)(C), "affiliate" means a person who directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, another person.

(D) The chair of the state regulatory authority shall be a nonvoting member of the advisory board. A majority of voting members shall constitute a quorum at a board meeting. No vote may be taken unless a quorum is present. All decisions of the board shall be made by a majority vote of those members present and entitled to vote.

(2) In establishing the rate of fair and reasonable compensation for use of the right-of-way under this section, the advisory board shall consider all factors evidencing the value of use of the right-of-way, including, but not limited to, savings on construction costs due to ease of installation in controlled-access highway rights-of-way, comparable rates charged for the access, amount of right-of-way available in certain locations and demand for certain locations. Information pertaining to these factors shall be presented to the advisory board by the department and any other interested parties.

(3) The initial rate set shall be effective until the advisory board reconsiders the rate as provided in subdivision (4).

(4) Upon the request of the department or an applicant for a permit pursuant to subsection (a), the advisory board shall meet to consider a request to adjust the rate of compensation. Upon a showing that the current rate no longer reflects the value of access to the right-of-way, the board shall adjust the rate accordingly; provided, that the rate shall not be adjusted more frequently than once every twelve (12) months.

(5) The department shall provide, upon request, any administrative assistance as required by the advisory board.

(e) Nothing in this section or in any other provision of state law shall be construed to require the department to accommodate or permit the longitudinal installation of any utilities other than underground fiber optic cable lines and related facilities as permitted under this section within the rights-of-way of controlled-access highways, except as the department provides in its rules and regulations for accommodating facilities within highway rights-of-way.

(f) This section applies only to the installation of underground fiber optic cable lines and related facilities within the rights-of-way on controlled access highways on the state highway or federal interstate highway system. Nothing in this section shall be construed as otherwise altering, amending or affecting the statutory, regulatory, or common law rights conferred to any telecommunications company to use the rights-of-way of any highways, county roads, city streets, or public lands of the state, including, but not limited to, those rights conferred by §§ 65-21-101 and 65-21-201.

(g) The use of compensation received under this section to offer or provide

telecommunication services to the public for hire by the department or through any other governmental or business entity or business arrangement is expressly prohibited.

- (h) [Deleted by 2013 amendment, effective July 1, 2013.]
- (i) [Deleted by 2013 amendment, effective July 1, 2013.]
- (j) [Deleted by 2013 amendment, effective July 1, 2013.]

**54-17-105. Eligibility for scenic highway designation — Requirements of designation — Comprehensive plan.**

(a) Highways or thoroughfares that are maintained through the use of state or federal funds, and that are not needed for essential commercial or defense traffic, shall be eligible for designation as scenic highways, with exceptions the general assembly may from time to time consider necessary by designation in § 54-17-114.

(b) The designation of additions to the scenic highway system shall conform to the following criteria:

- (1) Highways designated as scenic highways shall be components of a comprehensive system as outlined by a statewide scenic highway plan;
- (2) Scenic highways shall travel through scenic, historic, geologic and pastoral areas of the state;
- (3) Highways should be designated to offer alternative travel routes to the high-speed, heavily traveled highways in the state;
- (4) Designated highways shall provide the motorist with safe and relaxing routes of travel; and
- (5) Scenic highways shall conform to an interconnected state scenic highway system, except in unusual situations whereby a highway is judged desirable for inclusion within the system because of unique scenic, historical, geologic or pastoral features.

(c) The commissioner of transportation shall, in accordance with the rules, regulations, policies and procedures of the state publications committee, prepare a comprehensive statewide scenic highway plan. In the preparation of this plan, the commissioner may consult as necessary with the department of environment and conservation, the department of agriculture, the department of economic and community development, the respective development districts across the state, and the Tennessee historical commission. The comprehensive plan shall include, but not be limited to, the following elements:

- (1) The major routes of travel of tourists through the state so as to maximize the use of scenic highways by visitors in the state;
- (2) The desirability of connecting components of the Tennessee outdoor recreation area system, prominent historic sites, major cities, federal recreation areas, scenic, geologic and pastoral areas, and other desirable areas by a scenic highway system;
- (3) An interconnected system of scenic highways to enable the motorist to traverse the state of Tennessee on scenic roads;
- (4) Certain theme scenic highways of historical significance that would be beneficial and educational for travel by the citizens of the state and its visitors;
- (5) An administrative framework for marking and maintaining individual components of the Tennessee scenic highway system;
- (6) A report on the fiscal impact of recommended highways, including

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funds necessary to initiate and maintain those highways;

(7) Recommended specific highways to be designated by the general assembly as scenic highways in compliance with § 54-17-104, and subdivisions (b)(1)-(4), unless the general assembly by act designates specific exceptions to the requirements; and

(8) A uniform program for signing, marking, and promoting the Tennessee scenic highway system.

**54-17-106. [Repealed.]**

**54-17-107. Management — Promotion.**

(a) Once the general assembly designates a highway or road or a portion of the highway or road as a scenic highway, the state or local agency having jurisdiction of the highway shall erect appropriate signs marking the designation, in accordance with the rules and regulations authorized to be promulgated, from funds appropriated by the general assembly for that purpose. The signs shall conform to standards established by the comprehensive statewide scenic highway plan; furthermore, the state or local agency having jurisdiction over the particular scenic highway shall provide proper marking, maintenance, and refuse removal services in connection with the highway.

(b) The department of tourist development shall study each newly designated scenic highway with the intention of including it in state and national promotional campaigns. In no instance may scenic highways be promoted through advertisement on any sign, structure or advertising device other than signs used for marking scenic highways by the department of transportation or local agency having jurisdiction.

(c) The department of economic and community development shall act to coordinate the efforts of local planning commissions, development districts, chambers of commerce, convention and visitors bureaus, and other federal, state, local, and private organizations in continuing the promotion and development of the scenic highway system.

(d) [Deleted by 2013 amendment, effective July 1, 2013.]

**54-17-114. Designated scenic highways — Designated urban roads not to be impaired.**

(a) For the purposes of this part, the following are initially designated scenic highways:

**(1) Class I — Urban Roads.**

(A) That portion of Kingston Pike bearing the designation of State Highway 1 and United States Highway 11-70 in Knox County from its intersection with Concord Street and Neyland Drive in the City of Knoxville westward to the intersection of Kingston Pike with Lyons View Drive;

(B) That portion of Lyons View Drive from its intersection with Kingston Pike, westward to its intersection with Northshore Drive;

(C) That portion of United States Highway 70 South (West End Avenue) in Nashville from one hundred feet (100') west of Elmington Avenue westward to its intersection with Ensworth Avenue;

(D) All of Cherokee Boulevard located in the city of Knoxville;

(E) Two Rivers Parkway in Davidson County;

(F) Those portions of State Highway 100 in Davidson County from its intersection with Cheekwood Terrace south to its intersection with the Harpeth River and from its intersection with McCrory Lane south to its intersection with the South Harpeth River, and all of State Highway 251 in Davidson County, and that portion of State Highway 254 (Old Hickory Boulevard) from its intersection with State Highway 100 east to its intersection with Granny White Pike;

(G) South Knoxville Boulevard between the relocated Sevier Avenue and Chapman Highway in Knoxville;

(H) That segment of United States Highway 41 (Cummings Highway) in Hamilton County, beginning at the underpass at the current entrance to the Chattem property in St. Elmo, where that route is also designated as South Broad Street, running westward around the foot of Lookout Mountain to the railroad overpass on the east side of the Tiftonia business district;

(I) That segment of State Route 169 (Middlebrook Road which is commonly referred to as Middlebrook Pike) in Knox County from the western boundary of the right-of-way of Whitehall Road in the City of Knoxville westward to its terminus at that route's intersection with Hardin Valley Road, but excluding any part of that segment of State Route 169 that has property fronting on the route that was zoned on April 16, 1996, with the commercial designation of CA, CB or C3, or the industrial designation of I or I-3 under the Knox County or City of Knoxville zoning ordinances;

(J) That segment of State Route 385 (Nonconnah Parkway) in Shelby County from its intersection with United States Highway 72 to Interstate 240, but excluding any part of the segment of Route 385 that has property fronting on the route that is zoned on June 13, 1997, with the commercial designation of CL, CH or CP or the industrial designation of IL or IH under the Shelby County or city of Memphis zoning ordinances; and

(K) All of State Route 475, Knoxville Parkway, a proposed project connecting I-40 / I-75 southwest of Knoxville to I-75 north of Knoxville, in Knox, Anderson and Loudon counties.

**(2) Class II — Rural Roads.**

(A) The portion of United States Highway 41 from its intersection with Interstate Highway 24 in Hamilton County westward through the Tennessee River Gorge, Jasper and on to the junction of that highway with State Highway 27 at Kimball (Marion County) and south along State Highway 27 to Interstate 24;

(B) That portion of State Highway 66 from the French Broad River to Interstate 40, in Sevier County, except for the first two thousand one hundred fifty feet (2,150') north of state bridge number 78-66-4.95 toward Interstate 40 in the north-bound lane only;

(C) That portion of the Pellissippi Parkway (State Highway 162) in Knox County from its intersection with Interstate 40, to Melton Hill Lake;

(D) The John Sevier Highway, in Knox County, from the Alcoa Highway (United States Highway 129) to the Chapman Highway (United States Highway 411/441);

(E) That portion of Northshore Drive in Knox County from its intersection with Lyons View Drive and Westland Drive west to Loudon County; provided, that the height restrictions on buildings imposed by § 54-17-115

shall not apply to that property along Northshore Drive within Knox County that is now or, subsequent to April 22, 2005, zoned "TC-1 (Town Center)", or zoned C-6 from the east right-of-way line of Keller Bend Road at Northshore to the east right-of-way line of Pellissippi Parkway, or any similar zoning category, under the zoning ordinances of the city of Knoxville;

(F) That portion of United States Highway 70 North beginning east of Cookeville at the Falling Water Bridge and extending approximately five (5) miles toward Monterey through the Dry Valley Community and ending at the Sand Springs Community;

(G) That portion of State Highway 73 from the city of Maryville to the city of Townsend;

(H) That portion of Westland Drive in Knoxville from its intersection with Northshore Drive to its intersection with Northshore Drive at the western end;

(I) All of United States Highway 411 in Blount County and that portion of United States Highway 411 in Sevier County from the Blount County boundary to the intersection of United States Highway 411 with the Chapman Highway (United States Highway 441);

(J) That portion of new State Highway 95 in Loudon and Blount counties from the Fort Loudon Dam to its intersection with United States Highway 129 at Morganton Road;

(K) That portion of United States Highway 129 in Blount County, known as the 129 Bypass, from its intersection with State Highway 73 and Hall Road in the city of Alcoa to its intersection with United States Highway 411 in the city of Maryville;

(L) All of Lyons Bend Road in Knox County;

(M) That portion of Pittman Center Road from the intersection of Pittman Center Road with State Highway 73 East to the intersection of Pittman Center Road with United States Highway 411, east of Sevierville, but excluding those portions of Pittman Center Road that are within the boundaries, as of January 1, 1982, of incorporated municipalities;

(N) That portion of United States Highway 321 from the intersection of United States Highway 321 with Interstate 40 in Loudon County through Blount and Sevier counties to the intersection of United States Highway 321 with Interstate 40 in Cocke County, but excluding those portions of United States Highway 321 that are within the boundaries, as of January 1, 1982, of incorporated municipalities;

(O) Hardin Valley Road in Knox County;

(P) That portion of State Highway 58 in Hamilton County from the city limits of Chattanooga, as of July 1, 1987, to the Hamilton County boundary;

(Q) That portion of Pellissippi Parkway (State Highway 162) that has been or will be constructed in Blount and Knox Counties after January 1, 1987; provided, that the height restrictions on buildings imposed by § 54-17-115 and sign restrictions referred to in § 54-17-109 that are applicable to § 54-17-109(1) and (10) shall not apply to that property along the Pellissippi Parkway within Knox County that is located between Kingston Pike and Interstate 75/40, all of which shall be regulated by the zoning ordinances and regulations of the appropriate county or municipal government; and provided, further, that the height restrictions on build-

ings imposed by § 54-17-115 shall not apply to that property along the Pellissippi Parkway within Knox County that is now or, subsequent to April 22, 2005, zoned "TC-1 (Town Center)", or any similar zoning category, under the zoning ordinances of the city of Knoxville; and provided, further, that the height restrictions on buildings imposed by § 54-17-115 shall not apply to that property along Pellissippi Parkway within the corporate limits of the city of Alcoa, that is now or hereafter zoned for planned commercial zones or any similar zoning category under the zoning ordinances of the city of Alcoa;

(R) All of the Natchez Trace Parkway, except for those portions within the boundaries of incorporated municipalities;

(S) All of the Foothills Parkway, except for those portions within the boundaries of incorporated municipalities;

(T) That portion of Alcoa Highway from the intersection of Alcoa Highway and Kingston Pike in Knox County to the intersection of Alcoa Highway and Singleton Station Road in Blount County; provided, that the height restrictions on buildings imposed by § 54-17-115 shall not apply to that property along Alcoa Highway being situated in District 9 in Knox County and Ward 24 of the City of Knoxville and being more particularly bounded and described as Tract 1, the University of Tennessee Medical Center, at the intersection of Alcoa Highway and Cherokee Trail, and regulated by the zoning ordinances and regulations of the City of Knoxville;

(U) The 9.141 mile segment of the Charles H. Coolidge Medal of Honor Highway beginning with its intersection with Signal Mountain Road to State Route 153;

(V) The 9.33 mile segment of the Bill Carter Causeway beginning with its intersection with State Route 153 to north of Soddy Lake in Soddy-Daisy;

(W) That portion of Highway 70 South from Murfreesboro to Woodbury;

(X) All of United States Highway 27/State Route 29 in Rhea County;

(Y) That portion of United States Highway 411 in Sevier County from the city limits of Sevierville to the Jefferson County boundary;

(Z) That portion of United States Highway 411 in Sevier County from its intersection with United States Highway 441 at Newell Station west to the Blount County boundary;

(AA) That segment of state route 416 in Sevier County from its intersection with United States Highway 411 to its intersection with United States Highway 321;

(BB) That portion of State Highway 70 in Hawkins and Hancock counties from the intersection of State Highway 94 at Alumwell to the intersection of State Highway 33 at Kyles Ford, eleven and three tenths (11.3) miles;

(CC) All of the highway known as The Trace located in Land Between the Lakes National Recreational Area in Stewart County; and

(DD) That portion of United States Highway 441 (Newfound Gap Road) in Sevier County from the city limits of the city of Gatlinburg to the Tennessee-North Carolina state line.

(b) No state or local governmental entity, agency or department shall take any action that undermines the scenic and historical qualities of roads designated as scenic highways under subdivision (a)(1).

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**54-21-110. Affixing outdoor advertising to signs on state highways prohibited.**

No person shall affix any outdoor advertising on any sign erected under the authority of the department, or on any right-of-way of any state highway.

**54-21-122. Changeable message signs. [Effective until July 1, 2014. See the version effective on July 1, 2014.]**

(a) Changeable message signs may be double faced, back to back or V- type signs.

(b) Changeable message signs with a digital display that meet all other requirements pursuant to this chapter are permissible subject to the following restrictions:

(1) The message display time shall remain static for a minimum of eight (8) seconds with a maximum change time of two (2) seconds;

(2) Video, continuous scrolling messages and animation are prohibited; and

(3) The minimum spacing of the changeable message signs with a digital display on the interstate system or controlled access highways is two thousand feet (2,000'); provided, however, that an outdoor advertising device that uses only a small digital display, not to exceed one hundred square feet (100 sq. ft.) in total area, to give public information, such as time, date, temperature or weather, or to provide the price of a product, the amount of a lottery prize or similar numerical information supplementing the content of a message otherwise displayed on the sign face shall not be subject to the minimum spacing requirement established in this subdivision (b)(3), or to any application for a specific digital display permit or permit addendum as established in subsections (c) and (d), or to any fee for a permit addendum as established in § 54-21-104(b).

(c) No person shall erect, operate, use or maintain a changeable message sign with a digital display in a new location without first obtaining a permit and tag expressly authorizing a changeable message sign with a digital display, and annually renewing the permit and tag, as provided in § 54-21-104. No outdoor advertising device with a digital display lawfully permitted, erected and in operation prior to June 1, 2008, shall be required to obtain any additional permit under this subsection (c).

(d) No person shall erect, operate, use or maintain a changeable message sign with a digital display in place of or as an addition to any existing permitted outdoor advertising device without first obtaining, and annually renewing with the permit, an addendum to the permit expressly authorizing a changeable message sign with a digital display in that location. No outdoor advertising device with a digital display lawfully permitted, erected and in operation prior to June 1, 2008, shall be required to obtain any addendum under this subsection (d).

(e) The commissioner shall under no circumstances permit or authorize any person to erect, operate, use or maintain a changeable message sign of any type as a replacement for or as an addition to any nonconforming outdoor advertising device or in any nonconforming location.

(f) Notwithstanding any other state law or regulation to the contrary, a person who is granted a permit or an addendum to a permit authorizing a changeable message sign with a digital display in accordance with subsection

(c) or (d) shall have up to, but no more than, one hundred eighty (180) calendar days after the date on which the permit or addendum is granted within which to erect and begin displaying an outdoor advertising message on the changeable message sign. If the permitted or authorized changeable message sign with a digital display is not erected and displaying a message within this required time, the permit or addendum to the permit shall be revoked and the changeable message sign with the digital display shall be removed by the applicant or subject to removal by the commissioner as provided in § 54-21-105.

(g) Any application for a permit or addendum for a digital display as described in this section may be made using the form for an application for permit for an outdoor advertising device existing on June 1, 2008, until a separate form is available.

**54-21-122. Changeable message signs. [Effective on July 1, 2014. See the version effective until July 1, 2014.]**

*(a) Changeable message signs may be double faced, back to back or V- type signs.*

*(b) Changeable message signs with a digital display that meet all other requirements pursuant to this chapter are permissible subject to the following restrictions:*

*(1) The message display time shall remain static for a minimum of eight (8) seconds with a maximum change time of two (2) seconds;*

*(2) Video, continuous scrolling messages and animation are prohibited; and*

*(3) The minimum spacing of the changeable message signs with a digital display on the interstate system or controlled access highways is two thousand feet (2,000'); provided, however, that an outdoor advertising device that uses only a small digital display, not to exceed one hundred square feet (100 sq. ft.) in total area, to give public information, such as time, date, temperature or weather, or to provide the price of a product, the amount of a lottery prize or similar numerical information supplementing the content of a message otherwise displayed on the sign face shall not be subject to the minimum spacing requirement established in this subdivision (b)(3), or to any application for a specific digital display permit or permit addendum as established in subsections (c) and (d), or to any fee for a permit addendum as established in § 54-21-104(b).*

*(c) No person shall erect, operate, use or maintain a changeable message sign with a digital display in a new location without first obtaining a permit and tag expressly authorizing a changeable message sign with a digital display, and annually renewing the permit and tag, as provided in § 54-21-104. No outdoor advertising device with a digital display lawfully permitted, erected and in operation prior to June 1, 2008, shall be required to obtain any additional permit under this subsection (c).*

*(d) No person shall erect, operate, use or maintain a changeable message sign with a digital display in place of or as an addition to any existing permitted outdoor advertising device without first obtaining, and annually renewing with the permit, an addendum to the permit expressly authorizing a changeable message sign with a digital display in that location. No outdoor advertising device with a digital display lawfully permitted, erected and in operation prior to June 1, 2008, shall be required to obtain any addendum under this*

*subsection (d).*

*(e) The commissioner shall under no circumstances permit or authorize any person to erect, operate, use or maintain a changeable message sign of any type as a replacement for or as an addition to any nonconforming outdoor advertising device or in any nonconforming location.*

*(f) Notwithstanding any other state law or regulation to the contrary, a person who is granted a permit or an addendum to a permit authorizing a changeable message sign with a digital display in accordance with subsection (c) or (d) shall have up to, but no more than, one hundred eighty (180) calendar days after the date on which the permit or addendum is granted within which to erect and begin displaying an outdoor advertising message on the changeable message sign. If the permitted or authorized changeable message sign with a digital display is not erected and displaying a message within this required time, the permit or addendum to the permit shall be revoked and the changeable message sign with the digital display shall be removed by the applicant or subject to removal by the commissioner as provided in § 54-21-105.*

*(g) Any application for a permit or addendum for a digital display as described in this section may be made using the form for an application for permit for an outdoor advertising device existing on June 1, 2008, until a separate form is available.*

*(h)(1) All changeable message signs installed on or after July 1, 2014, shall come equipped with a light sensing device that automatically adjusts the brightness in direct correlation with ambient light conditions.*

*(2) The brightness of light emitted from a changeable message sign shall not exceed 0.3 foot candles over ambient light levels measured at a distance of one hundred fifty feet (150') for those sign faces less than or equal to three hundred square feet (300 sq. ft.), measured at a distance of two hundred feet (200') for those sign faces greater than three hundred square feet (300 sq. ft.) but less than or equal to three hundred eighty-five square feet (385 sq. ft.), measured at a distance of two hundred fifty feet (250') for those sign faces greater than three hundred eighty-five square feet (385 sq. ft.) and less than or equal to six hundred eighty square feet (680 sq. ft.), measured at a distance of three hundred fifty feet (350') for those sign faces greater than six hundred eighty square feet (680 sq. ft.), or subject to the measuring criteria in the applicable table set forth in subdivision (h)(4).*

*(3) Any measurements required pursuant to this subsection (h) shall be taken from a point within the highway right-of-way at a safe distance from the lane of the main traveled way and as close to perpendicular to the face of the changeable message sign as practical. If perpendicular measurement is not practical, valid measurements may be taken at an angle up to forty-five degrees (45°) from the center point of the sign face.*

*(4) In the event it is found not to be practical to measure a changeable message sign at the distances prescribed in subdivision (h)(2) a measurer may opt to measure the sign at any of the alternative measuring distances described in the applicable table set forth in this subdivision (h)(4). In the event the sign measurer chooses to measure the sign using an alternative measuring distance, the prescribed foot candle level above ambient light shall not exceed the prescribed level, to be determined based on the alternative measuring distances set forth in the following tables in subdivisions (h)(4)(A), (B), (C), and (D), as applicable:*

*(A) For changeable message signs less than or equal to three hundred square feet (300 sq. ft.):*

<i>Alternative Measuring Distance:</i>	<i>Prescribed Foot Candle Level:</i>
100	0.68
125	0.43
150	0.3
200	0.17
250	0.11
275	0.09
300	0.08
325	0.06
350	0.06
400	0.04

*(B) For changeable message signs greater than three hundred square feet (300 sq. ft.) but less than or equal to three hundred eighty-five square feet (385 sq. ft.):*

<i>Alternative Measuring Distance:</i>	<i>Prescribed Foot Candle Level:</i>
100	1.2
125	0.77
150	0.53
200	0.3
250	0.19
275	0.16
300	0.13
325	0.11
350	0.1
400	0.08

*(C) For changeable message signs greater than three hundred eighty-five square feet (385 sq. ft.) but less than or equal to six hundred eighty square feet (680 sq. ft.):*

<i>Alternative Measuring Distance:</i>	<i>Prescribed Foot Candle Level:</i>
100	1.88
125	1.2
150	0.83
200	0.47
250	0.3
275	0.25
300	0.21
325	0.18
350	0.15
400	0.12

*(D) For changeable message sign greater than six hundred eighty square feet (680 sq. ft.):*

<i>Alternative Measuring Distance:</i>	<i>Prescribed Foot Candle Level:</i>
100	3.675
125	2.35
150	1.63

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<i>Alternative Measuring Distance:</i>	<i>Prescribed Foot Candle Level:</i>
200	0.92
250	0.59
275	0.49
300	0.41
325	0.35
350	0.3
400	0.23
425	0.2
450	0.18
500	0.15

*(5) This subsection (h) shall apply to all changeable message signs located in this state operated pursuant to a permit issued by the commissioner.*

**55-4-103. Registration plates furnished by department — Form and contents — Size — Replacement plates — Reissue of plates — County name strip — Recycling of plates.**

(a) The department shall likewise furnish to the county clerks of the various counties of the state all registration plates of all types that may be required by the county clerks in the exercise of the duties in subdivision (b)(1) imposed upon them.

(b)(1) Every registration plate shall have displayed upon it, in addition to a registration number, the year in which it expires and the abbreviation of the word, "Tennessee," and if the registration plate is issued for any type of vehicle other than a privately owned passenger vehicle not operated for hire, some symbol, or word, indicating the type vehicle for which the plate was originally issued. Registration plates shall bear individual distinctive alpha-numerical characters not to exceed a combination of seven (7) as determined by the commissioner. To promote the state's official travel planning web site, all registration plates which are created after July 1, 2010, other than registration plates issued under part 2 or part 3 of this chapter, shall also include the language "www.tnvacation.com" or the domain name of any subsequent official web site used by the department of tourist development.

(2) Registration plates shall be designed in such a manner as determined by the commissioner as will permit the display of validation or revalidation tabs, stickers, or other devices as provided in § 55-4-104(d), and registration plates shall also be designed in such a manner as determined by the commissioner as will permit thereon, the display of county and/or municipal wheel tax tabs, stickers, or other devices evidencing payment of wheel or road taxes enacted by the respective county and/or municipality of Tennessee, if such local government, pursuant to § 5-8-102(d)(3), requires the issuance, display and placement of such tabs, stickers, or other devices for wheel or road taxes on the registration plate.

(3) Wheel tax records shall be maintained by the county clerk for the same period of time as registration records prior to disposition.

(4) Registration plates shall also be designed in such a manner to require the display of tabs, stickers or devices on plates to be issued for a private passenger vehicle, which tabs, stickers or devices shall specify the name of the county of issue. The characters of the name of the county shall in no

event be smaller than the characters of the words "Volunteer State" which now appear on registration plates. The area for the display of the county shall be below and parallel to the alpha-numerical legend as provided in subdivision (b)(1). Tabs, stickers or devices on plates shall be issued at the time of the issuance of the registration plates as required by this chapter and subsection (i) and displayed on the registration plates in a manner to be determined by the commissioner.

(c) Registration plate or plates and the required numerals thereon, except the year number for which issued, shall be of sufficient size to be readable from a distance of one hundred feet (100') during daylight.

(d) This section shall apply to and include any mobile home or house trailer.

(e) The requirement in subdivision (b)(1) for displaying the year of issue on a plate may be removed with respect to those plates issued under the provisions of a registration which does not require annual renewal.

(f)(1) To promote highway safety and increase visibility and legibility on registration plates, the plates shall be fully reflectorized. The commissioner has the authority to establish specifications covering reflectorization.

(2) In addition to the fee imposed in subdivision (f)(3) and in addition to all other motor vehicle registration fees prescribed by law, there shall be paid to the department the additional fee of seventy-five cents (75¢) at the time of the issuance of registration plates or the renewal thereof.

(3) In addition to all other motor vehicle registration fees prescribed by law, there shall be paid to the department the additional sum of one dollar (\$1.00) at the time of the issuance of registration plates or the renewal thereof.

(g) When any plate becomes so mutilated or effaced as to no longer meet the requirements of the law, the holder shall apply to the department for suitable replacement. The commissioner is authorized to promulgate rules and regulations as may be necessary to provide for the replacement of lost or destroyed plates and to collect a fee of ten dollars (\$10.00) for each application.

(h) Commencing January 1, 2006, and not later than each eighth anniversary thereafter, the commissioner shall cause to be reissued a new registration plate of a design as directed by the commissioner consistent with the terms, conditions and provisions of this section and this chapter. New registration plates shall not be issued prior to January 1, 2006; provided, however, that the issue of the new registration plates on January 1, 2006, and any subsequent issuance shall be deferred to a later January 1 if funds for the reissue of the registration plates are not appropriated specifically in the general appropriations act.

(i) County residents who purchase a vehicle out of their county of residence shall receive a county name strip from the county clerk of their county of residence upon proof of proper registration and payment of any county wheel tax or other applicable county fees.

(j) After January 1, 2009, every motor vehicle owner who replaces the registration plate on the owner's motor vehicle may deposit the old, outdated or expired registration plate with the department of revenue or its agents in a manner determined by the commissioner pursuant to this subsection (j). The department of revenue shall create a program that promotes the recycling of used or outdated registration plates for the metal content in the plates. The program shall require each county facility where registration plates are issued to have a site for placing a bin or other container to collect used, outdated or

expired registration plates for recycling. Each renewal notice of registration shall contain information regarding any such recycling program for registration plates. The commissioner may enter into contractual agreements with nonprofit organizations for the collection, disposal and recycling of used, expired or outdated registration plates, including the placement and maintenance of recycling bins or containers at county facilities where registration plates are issued, and the transportation of the registration plates to recycling facilities. Notwithstanding any provision of this subsection (j) to the contrary, the commissioner shall not be required to enter into an agreement or create a program pursuant to this subsection (j) that would require the department of revenue to incur, pay, or otherwise assume responsibility for the payment of, expenses associated with the collection, disposal or recycling of used, expired or outdated registration plates. However, contractual agreements may allow nonprofit organizations to retain proceeds from the collection, disposal and recycling as an incentive to participation. The county mayor shall designate a location on county property, either inside or outside of any county facility where registration plates are issued, for the placement of recycling bins or containers. Other than providing a location for a bin or container, the county shall have no responsibility for implementation of the recycling program or liability for its operation. If a contractor is not maintaining recycling facilities in a satisfactory manner on county property, the county mayor may notify the commissioner of revenue. The commissioner shall take appropriate steps to ensure that the contractor remedies the problem or terminate the agreement and find a suitable replacement.

**55-4-105. Renewal certificates and registration plates — Application — Mail order service — Issuance — Replacement of lost registrations — Locations for obtaining renewal.**

(a)(1) Application for renewal certificates of registration and registration plates shall be made by the owner by the surrender of the owner's old certificate of registration or other indicia thereof as the commissioner may authorize to the vehicle and the payment of the required fee for renewal registration.

(2) The office of county clerk may make inquiry into an owner, including, but not limited to, review of driver records for the purpose of establishing an owner's residence or address, before issuing a renewal of registration or a tab, sticker or other device as a prerequisite to payment of wheel or road taxes. Upon request of the office of the county clerk, the department shall provide a current list of the names, drivers' license numbers and addresses of drivers from the requesting county.

(3)(A) Any applicant who applies for registration who was a resident of the county in the previous year or years and was liable for and failed to pay the applicable wheel tax shall, for such year or years, be liable for and pay all prior years' wheel taxes prior to being issued such registration. This subdivision (a)(3)(A) shall not apply to licensed motor vehicle dealers, financial institutions or businesses and applicants engaged in the rental of motor vehicles, trucks and trailers for periods of thirty-one (31) days or less.

(B) This subdivision (a)(3) shall only apply in any county having a population of not less than one hundred eighty-two thousand (182,000) nor more than one hundred eighty-two thousand one hundred (182,100),

according to the 2000 federal census or any subsequent federal census.

(b) The registrar of motor vehicles, or deputy as provided by law, may receive applications for renewal certificates of registration and registration plates and issue the certificates and plates commencing on March 1 of each year.

(c) Each county clerk shall provide a mail order service for the renewal of registrations whereby registrants may apply for and receive the renewal certificates and plates or decals through the United States postal service. Except as otherwise required by law, an application for renewal by mail must be postmarked not later than twenty (20) days before the license expiration date to allow time for processing. Each county clerk may impose a fee of two dollars (\$2.00) for the service of handling mail orders of plates and decals.

(d) In the event a plate or decal is lost after issuance and mailing, and before delivery to the registrant, the county clerk shall, as agent for the state, process a replacement registration at no charge upon application and affidavit from the registrant. The county clerk shall verify the registration and date of mailing.

(e)(1) The holder of a valid and outstanding certificate of registration for a noncommercial vehicle shall apply for its renewal through the office of the clerk of the county of the owner's residence. The registration issued for a commercial vehicle may be renewed through the office of the clerk of the county of the owner's principal place of business within the state, or of the county of incorporation in the case of a corporate owner or of any other county in which the owner or corporate owner maintains an office or place of business. Any applicant for the renewal of a registration under which the fee is to be prorated or apportioned and any nonresident applicant for renewal shall, within the discretion of the commissioner, make application directly to the division.

(2) For the purposes of this subsection (e), "commercial vehicle" means any vehicle that is operated in the furtherance of any commercial enterprise; provided, that vehicles registered with Tennessee Association of Realtors new specialty earmarked license plates shall be deemed not to be commercial vehicles.

(3)(A) A violation of subdivision (e)(1) for the renewal of a motor vehicle license in certain locations is a Class C misdemeanor.

(B) If a county wheel tax or like local fee is due and owing to local government for the use of the vehicle, the owner or operator shall, upon conviction, be punished in accordance with a Class B misdemeanor and subject to the fine only.

(C) In instances of violations in which it is found that the wheel tax or local fee has been paid or is not due, the court may, in the event of a conviction, substitute, in lieu of the punishment set forth in subdivision (e)(3)(B), a fine of not less than five dollars (\$5.00) nor more than ten dollars (\$10.00).

(f) Notwithstanding any law to the contrary, the office of county clerk shall not be required to review the driving record of any owner before issuing a certificate of registration or a tab, sticker or other device as a prerequisite to payment of wheel or road taxes.

(g)(1) If a person makes an application for a renewal certificate of registration or registration plate pursuant to this section and at the time of application owes any motor vehicle registration fee to the office of the county clerk, then the clerk may deny the application until the person makes full

payment on such fee amount.

(2) In addition to the fee amount described in subdivision (g)(1), the clerk may charge the person a clerk's fee, which shall be equal to ten percent (10%) of the fee amount described in subdivision (g)(1); provided, that eighty percent (80%) of such clerk's fee may be retained by the county and the remaining twenty percent (20%) of such clerk's fee shall be forwarded by the clerk to the department.

**55-4-110. Display of registration plates — Manner — Penalty for violation.**

(a) The registration plate issued for passenger motor vehicles shall be attached on the rear of the vehicle. The registration plate issued for those trucks with a manufacturer's ton rating not exceeding three-quarter ( $\frac{3}{4}$ ) ton and having a panel or pickup body style, and also those issued for all motor homes, regardless of ton rating or body style thereof, shall be attached to the rear of the vehicle. The registration plate issued for all other trucks and truck tractors shall be attached to the front of the vehicle. All dealers' plates, as provided in § 55-4-221, and those registration plates issued for motorcycles, trailers or semitrailers shall be attached to the rear of the vehicle.

(b) Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so to prevent the plate from swinging and at a height of not less than twelve inches (12") from the ground, measuring from the bottom of the plate, in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible; provided, if a motorcycle is equipped with vertically mounted license plate brackets, its license plate shall be mounted vertically with the top of such license plate fastened along the right vertical edge. No tinted materials may be placed over a license plate even if the information upon the license plate is not concealed.

(c)(1) Except as provided in subdivision (c)(2), for all motor vehicles that are factory-equipped to illuminate the registration plate, the registration plate shall be illuminated at all times that headlights are illuminated.

(2) Subdivision (c)(1) shall not apply to any antique motor vehicle as defined in § 55-4-111(b).

(d)(1) A violation of this section is a Class C misdemeanor. All proceeds from the fines imposed by this subsection (d) shall be deposited in the state general fund.

(2) A person charged with a violation of this section may, in lieu of appearance in court, submit a fine of ten dollars (\$10.00) for a first violation, and twenty dollars (\$20.00) on second and subsequent violations to the clerk of the court that has jurisdiction of the offense within the county in which the offense charged is alleged to have been committed.

(3) If the violation of this section results solely from the failure to illuminate the registration plate at all times headlights are required to be displayed, the fine set out in this subsection (d) shall be the only amount the person is assessed. No litigation tax levied pursuant to title 67, chapter 4, part 6 shall be imposed or assessed against anyone convicted of a violation of this section nor shall any clerk's fee or court costs, including, but not limited to, any statutory fees of officers, be imposed or assessed against anyone convicted of a violation of this section. Further, the lighting violation

described in this subdivision (d)(3) shall be considered a nonmoving traffic violation and no points shall be added to a driver's record for such violation.

**55-4-113. Registration taxes for freight motor vehicles.**

(a) The registration taxes for trucks and truck tractors shall be:

(1) **Private Carriers and Public Household Goods Carriers.** Fixed load vehicles, as defined in § 55-1-117, so designated and used only for the transportation of equipment that is mounted thereon may be registered at a rate of twenty-five percent (25%) of the tax schedules set forth in subdivision (a)(2);

(2) **Private Carriers, Public Carriers and Household Goods Carriers.** Every person, firm or corporation operating, for commercial purposes, a freight motor vehicle over the roads of the state shall first register the vehicle with the department and shall pay a tax as follows, according to the indicated classes set forth in this subdivision (a)(2):

(A)	Class	Freight motor vehicles with declared	
	1	maximum gross weight, including vehicle and load, of not more than nine thousand pounds (9,000 lbs.). Registration tax .....	\$ 48.50
(B)	Class	Freight motor vehicles with declared	
	2	maximum gross weight, including vehicle and load, not in excess of sixteen thousand pounds (16,000 lbs.). Registration tax .....	102.50
(C)	Class	Freight motor vehicles with declared	
	3	maximum gross weight, including vehicle and load, not in excess of twenty thousand pounds (20,000 lbs.). Registration tax .....	307.50
(D)	Class	Freight motor vehicles with declared	
	4	maximum gross weight, including vehicle and load, not in excess of twenty-six thousand pounds (26,000 lbs.). Registration tax .....	461.00
(E)	Class	Freight motor vehicles with declared	
	5	maximum gross weight, including vehicle and load, not in excess of thirty-two thousand pounds (32,000 lbs.). Registration tax .....	615.00
(F)	Class	Freight motor vehicles with declared	
	6	maximum gross weight, including vehicle and load, not in excess of thirty-eight thousand pounds (38,000 lbs.). Registration tax .....	691.00
(G)	Class	Freight motor vehicles with declared	
	7	maximum gross weight, including the weight of vehicle and load, not in excess of forty-four thousand pounds (44,000 lbs.). Registration tax .....	768.00
(H)	Class	Freight motor vehicles with declared	
	8	maximum gross weight, including the weight of vehicle and load, not in excess of fifty-six thousand pounds (56,000 lbs.). Registration tax .....	922.00

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- (I) Class 9 Freight motor vehicles with declared maximum gross weight, including the weight of vehicle and load, not in excess of sixty-six thousand pounds (66,000 lbs.). Registration tax ..... 999.00
- (J) Class 10 Freight motor vehicles with declared maximum gross weight, including the weight of vehicle and load, not in excess of seventy-four thousand pounds (74,000 lbs.). Registration tax ..... 1,178.50
- (K) Class 11 Freight motor vehicles with declared maximum gross weight, including the weight of vehicle and load, not in excess of eighty thousand pounds (80,000 lbs.). Registration tax ..... 1,332.50
- (L) Class 12 Fixed load vehicles, as defined in § 55-1-117, may be registered at twenty-five percent (25%) of the rate set forth in this subdivision (a)(2) for a vehicle of comparable weight;

**(3) Combined Farm and Limited Private Trucks.**

(A) Motor vehicles used exclusively for the movement of farm products for the grower from the point of production to the first market, or operated as farm trucks, or as a logging and lumbering truck as defined in subdivision (a)(3)(C), or as the owner's private conveyance, transporting only tangible personal property belonging to the owner or a guest occupant, shall be classified by the commissioner and registered with the department as freight motor vehicles at the following taxes in lieu of those set out in subdivision (a)(1):

Class 1 .....	\$ 19.53
Class 2 .....	36.30
Class 3 .....	108.90
Class 4 .....	140.80
Class 5 .....	187.00
Class 6 .....	217.80
Class 7 .....	242.00
Class 8 .....	297.00
Class 9 .....	343.20
Class 10 .....	400.40
Class 11 .....	541.20

(B) There shall not be eligible for registration under this exception to the general licensing provisions any motor vehicles operated commercially as part of a business venture or for delivery service to customers by dairies, hatcheries, pharmacies, grocers, service stations, garages and the like; however, farm trucks used by egg farmers to transport eggs from the point of production to the first market shall be registered with the department as freight motor vehicles at taxes in subdivision (a)(3)(A) in lieu of those set out in subdivision (a)(1);

(C) For purposes of this section, “logging and lumbering trucks” are those trucks used for hauling logs, pulpwood, bark, wood chips, and wood dust from the woods to the mill or for hauling lumber, bark, wood chips, and wood dust from the mill to a loading or storage place;

(D) Truck tractors used exclusively to pull lowboy-type trailers on which are transported machinery that is used only for agricultural purposes, such as, but not limited to, terracing, clearing land, and building ponds, levees, ditches and/or canals; and trucks on which are mounted lime or fertilizer spreaders may register in this category under the appropriate weight class. The use of the highways by these limited use motor vehicles registered in this class is restricted to that which is incidental to the movement of the designated machinery from farm to farm and any volume and unpackaged lime and fertilizer from the distribution point to the farm;

(4) **Miscellaneous Classes.** Well drillers as defined in

§ 55-1-117 ..... \$ 35.20;

(5) **Freight trailers, semi-trailers and pole trailers.**

(A) Freight trailers, semi-trailers, and pole trailers used primarily for hauling freight and trailers used in the furtherance of a business, any trailer not required to be registered but which the owner desires to be registered, shall be registered and, in addition to the tax herein prescribed for trucks and truck tractors, there shall be imposed on vehicles so classified a registration tax of seventy-five dollars (\$75.00). The certificate of registration and registration plate issued for a specific vehicle shall continue valid for the duration of the owner’s interest in that vehicle;

(B)(i) The provisions of § 55-4-101 to the contrary notwithstanding, no registration for trailers, semi-trailers or pole trailers shall be transferred for any reason and a new registration shall be required for additional trailers;

(ii) The commissioner may, in his discretion, require an owner of a freight trailer, semi-trailer, or pole trailer registered in this state pursuant to subdivision (a)(5)(A) to provide written confirmation to the department as to whether or not the trailer has been destroyed, abandoned, sold, or otherwise transferred to another owner and still bears the permanent registration plate originally issued to the trailer;

(iii) If such owner provides written confirmation to the department that the trailer has been destroyed, abandoned, sold, or otherwise transferred to another owner and the trailer has not been properly registered to the new owner, the commissioner shall immediately terminate the registration and plate originally assigned to the trailer under the name of the owner of record;

(iv) If such owner fails to provide written confirmation within ninety (90) days of the date of the commissioner’s request, the commissioner may, in the commissioner’s discretion, terminate the registration and plate originally assigned to the trailer under the name of the owner of record;

(v) Whenever the title to a freight trailer, semi-trailer, or pole trailer registered in this state pursuant to subdivision (a)(5)(A) is destroyed, abandoned, sold, or otherwise transferred to another owner, the registration of the trailer shall expire. If the trailer is sold or otherwise transferred to a new owner, the new owner shall obtain a new registra-

tion of the trailer. Notwithstanding any law to the contrary, the department may issue to such new owner a new or existing registration plate bearing the same alpha-numerical characters as were affixed to such trailer at the time of transfer to the new owner; and

(C) Implements designed for carrying and distributing fertilizer shall not be subject to the licensing requirement imposed on trailers, and when used for the transportation of fertilizer between a plant and a farm the gross weight of the implement and its cargo shall not be considered in determining the licensing requirement for the prime mover;

**(6) Special Zone Licenses.**

(A) **Class 1.** It shall be permissible for any owner or operator of a freight motor vehicle that is to be operated exclusively within a zone limited to the streets of a designated municipal corporation and to the highways for a distance not to exceed fifteen (15) air miles beyond the limits of the municipality, to apply for and be issued a special municipal zone license. In counties having a metropolitan form of government, the county line shall be the limit for the operation of motor vehicles registered under this special license. The annual fee for this special license shall be four hundred seventy-three dollars (\$473) for freight motor vehicles with a declared maximum gross weight not exceeding seventy-four thousand pounds (74,000 lbs.), and an annual fee of five hundred fifty dollars (\$550) for freight motor vehicles with a declared maximum gross weight not exceeding eighty thousand pounds (80,000 lbs.). The annual fee for this special license for ready-mix concrete trucks shall be three hundred forty-one dollars (\$341); and

(B) **Class 2.** It shall be permissible for any owner or operator having a freight motor vehicle that is to be operated exclusively in a given county, and the counties that adjoin it, to apply for and be issued a special county zone license. The owner must, upon application for this special license, declare the base county and attest that the vehicle is to be operated exclusively in the base county and such other counties as may adjoin it. Movements from the base county to one (1) adjoining are restricted to the delivery of freight to its final destination, or to the place of consignment, or for the purpose of bringing freight from its place of origin to a point in the base county. The annual fee for this special license shall be six hundred sixteen dollars (\$616) for freight motor vehicles with a declared maximum gross weight not exceeding seventy-four thousand pounds (74,000 lbs.), and an annual fee of seven hundred fifteen dollars (\$715) for freight motor vehicles with a declared maximum gross weight not exceeding eighty thousand pounds (80,000 lbs.). The annual fee for this special license for ready-mix concrete trucks shall be four hundred forty dollars (\$440); and

(7)(A) Registration being a condition precedent to vehicular use in this state, it is the intent of this section that the owner or operator of a freight motor vehicle shall pay a registration tax sufficient to allow for its operation under a declared maximum gross weight limited only by the following scale of maximum weights for its axle configuration:

(i) For any single axle, the maximum allowable weight shall be twenty thousand pounds (20,000 lbs.); and

(ii) For any tandem axle group, the maximum allowable weight shall be thirty-four thousand pounds (34,000 lbs.);

(B) When a vehicle on which the tax has not been paid, or an adequate tax has not been paid, is found in operation, the owner or operator shall be

required to register or, if applicable, re-register it in a suitable weight class and, in addition to the statutory registration taxes, shall be subject to a tax assessed at the rate of five cents (5¢) per pound on each pound of weight for which no Tennessee tax has been previously paid. On an overweight poundage equal to not more than three percent (3%) of the maximum weight a freight motor vehicle in that classification is allowed, the tax per pound of the overage shall be only three cents (3¢) per pound. If the weight of the vehicle is more than three percent (3%) in excess of the maximum weight applicable to the class in which it is registered, however, the tax of five cents (5¢) per pound shall be imposed on any poundage over the three-percent allowance;

(C) When a vehicle registered in some class adequate for its lawful operational weight is found in operation at a weight exceeding the limit of the license, for which the tax has been paid, the operator shall be assessed an additional tax at the rate of five cents (5¢) per pound on each pound over the maximum allowed on the license. On an overweight poundage equal to not more than three percent (3%) of the maximum weight a freight motor vehicle in that classification is allowed, the tax per pound of the overage shall be only three cents (3¢) per pound. If the weight of the vehicle is more than three percent (3%) in excess of the maximum weight applicable to the class in which it is registered, however, the tax of five cents (5¢) per pound shall be imposed on any poundage over the three-percent allowance;

(D) Nonresidents operating vehicles under the provisions of a reciprocity agreement shall likewise be subject to the additional taxes provided under this subdivision (a)(7) when their vehicles are operated in excess of the licensed weight, or regardless of the licensed weight, in excess of eighty thousand pounds (80,000 lbs.);

(E) When the operator of any freight motor vehicle shall fail to load it or have it loaded in a manner and at weights conforming to the axle weight limitations set forth in this subdivision (a)(7), there shall be imposed a tax assessed on the basis of five cents (5¢) per pound on each pound of weight that exceeds the limit on an axle or group of axles. Except, with respect to vehicles being used to transport the products identified under § 55-7-203(b)(6), liability for the tax imposed by this subdivision (a)(7)(E) shall only begin to run commencing with the first pound that exceeds the total weight allowable for the number and type of its axles. On an overweight poundage equal to not more than three percent (3%) of the axle weight limit imposed for the classification in which a freight motor vehicle is registered, the tax per pound of the overage shall be only three cents (3¢) per pound. If the weight of the vehicle is more than three percent (3%) in excess of the maximum applicable axle weight, however, the tax of five cents (5¢) per pound shall be imposed on any poundage over the three-percent allowance;

(F) When any freight motor vehicle is found in operation with a gross weight in excess of the road and bridge weights posted by the commissioner of transportation pursuant to § 55-7-205, or weight that exceeds the maximum allowable under an overweight permit issued by the commissioner, the operator of a vehicle shall be assessed a tax at the rate of five cents (5¢) per pound for each pound of excess weight. On an overweight poundage equal to not more than three percent (3%) of the

applicable weight limit, the tax shall be only three cents (3¢) per pound. If the weight of the vehicle is more than three percent (3%) in excess of the maximum applicable weight, however, the tax of five cents (5¢) per pound shall be imposed on any poundage over the three-percent allowance;

(G)(i) The provisions of this subdivision (a)(7) respecting licensing and the assessment of additional taxes for excessive weights shall apply with respect to vehicles registered under the allowance for "Special Zone Licenses";

(ii) For the first offense, any owner of a freight motor vehicle that is operated in violation of the territorial limitation of a special zone license issued pursuant to this subdivision (a)(7) shall be subject to assessment of a penalty by the department, which shall be twenty-five percent (25%) of the special zone license fee for the full year with no credit or rebate for any portion of the year in which a license is unused. All funds collected pursuant to this subdivision (a)(7)(G)(ii) shall be earmarked for the enforcement of these zone license provisions;

(iii) On a second offense, occurring within the same licensing year as the first offense, in addition to the penalty specified in subdivision (a)(7)(G)(ii), any licensee whose truck is found to be in violation of the territorial limitation placed on the license shall be required to immediately re-register it under an applicable general licensing provision for a period of one (1) year following the date on which the second offense occurred;

(H) All taxes imposed by this section shall be a part of the registration taxes or fees and shall be payable to the department. Upon becoming delinquent, these taxes or fees shall be subject to collection by the commissioner of revenue under the provisions of title 67, chapter 1, part 14. The assessment of these taxes shall in no wise be restricted through the assessment of other taxes for some prior violation or any other condition relating to the privilege of operating the vehicle over the streets and highways of this state;

(I) A motor vehicle otherwise properly registered in its class pursuant to this section shall not be in violation of the maximum gross weight for its class, including vehicle and load, if the vehicle is found to have exceeded the maximum gross weight for its class solely by the occasional towing of a fork lift or tow motor where no part of the weight of such equipment rests on the towing vehicle; and the weight of the equipment shall not be considered in determining whether the motor vehicle has exceeded its maximum gross weight, including the load thereon, and in determining the licensing requirements for the motor vehicle in such circumstances;

(J)(i) When any logging truck, as defined in § 55-7-203, is found in operation with a gross weight in excess of the weights established by law, the operation of the vehicle shall not be assessed a tax if the vehicle's excess weight is less than ten percent (10%) of the vehicle's gross weight. If the weight of the vehicle is greater than ten percent (10%) in excess of the maximum applicable weight, the tax of five cents (5¢) per pound shall be imposed on any poundage over the maximum applicable weight;

(ii) If the commissioner of transportation is formally notified by an appropriate federal officer that as a result of any provision of this subdivision (a)(7)(J) that Tennessee will lose federal funds, then such

provision shall be void and inoperative. A loss of federal funds as a result of any provision of this subdivision (a)(7)(J) shall render the provision void and inoperative;

(K) When a freight motor vehicle is registered under subdivision (a)(3)(A), as a combined farm and limited private use truck and being operated commercially or as a commercial vehicle and is found in operation in violation of subdivision (a)(3)(A), the owner shall be subject to assessment of a penalty by the department, which shall be twenty-five percent (25%) of the commercial license fee for the full year with no credit or rebate for any portion of the year in which a license is unused;

(L) The penalties provided for in subdivision (a)(7), shall be waived upon submission within thirty (30) days to the commissioner, of proof that the vehicle has been properly registered in the appropriate classification.

(b) There shall be added to all the vehicle registration taxes imposed by this section a two and one-half percent (2.5%) increase, rounding to the nearest fifty cents (50¢), which shall be designated as the department of safety's safety inspection fee pursuant to § 65-15-116. This safety inspection fee shall not apply to a vehicle registering pursuant to subdivision (a)(3). This safety inspection fee shall be collected as a part of the vehicle registration taxes required by this section, and shall not be used for any purpose other than to fund the motor vehicle safety enforcement activities of the department of safety.

#### **55-4-132. Funding for computerized titling and registration system.**

(a) In addition to all other fees provided for in this part, there is imposed an additional fee of one dollar (\$1.00) on the registration of motor vehicles and the renewal of the registrations.

(b) All revenues received from the fees shall be earmarked and used solely for the development, acquisition and updating of a computerized titling and registration system and for the operation of the titling and registration system. These revenues shall not be used to replace, displace, reduce or otherwise supplant any moneys budgeted for the titling and registration of motor vehicles.

(c) All funds generated pursuant to this section shall be deposited in a special account earmarked solely for the purposes set forth in this section and any unused funds shall not revert to the general fund but shall be held in the account for these purposes.

(d) The department shall submit reports on its progress to the transportation and safety committee of the senate and transportation committee of the house of representatives between July 1, 1999, and until the completion of the updated computerized titling and registration system. These reports shall be submitted quarterly to the transportation committees unless the department is otherwise directed by the committees.

(e) The commissioner or the commissioner's designee shall appear before the transportation committee of the house of representatives and the transportation and safety committee of the senate no later than March 1 annually to report the status of the computerized titling and registration system.

#### **55-4-135. Registration of vehicles by owners performing full-time service in the military.**

Notwithstanding any law to the contrary, the owner of any motor vehicle

who is performing full-time service in the military and who is stationed outside of the continental United States shall be given a grace period of thirty (30) days from the date of the owner's return to Tennessee to renew the registration for any motor vehicle registered to the owner.

**55-4-201. Issuance — Applicability of part — Requirements — Plates deemed obsolete due to inactivity.**

(a)(1) All cultural, specialty earmarked and new specialty earmarked motor vehicle registration plates, memorial motor vehicle registration plates and special purpose motor vehicle registration plates now, or in the future, shall be issued and renewed pursuant to this part. No plate, other than those issued under part 1 of this chapter, shall be issued or renewed unless authorized in this part.

(2) For the purposes of this part and part 3 of this chapter, "this part" means this part and part 3 of this chapter.

(b) All plates issued pursuant to this part shall be issued and renewed subject to the following:

(1) Payment of the applicable registration fee, except as specifically provided otherwise by § 55-4-203 or any other applicable provision of this part;

(2) An additional fee of thirty-five dollars (\$35.00) to be paid by the applicant upon issuance and renewal, except as specifically provided otherwise by § 55-4-203 or any other applicable provision of this part;

(3)(A) A minimum order of one hundred (100) plates for collegiate plates as defined by § 55-4-209. Collegiate plates for motorcycles, as authorized by § 55-4-210(c), shall be subject to a minimum order of one hundred (100) plates for each classification of collegiate plates;

(B) A minimum order of at least five hundred (500) plates for all other cultural, specialty earmarked and new specialty earmarked plates. Personalized plates for motorcycles, as authorized by § 55-4-210(c), shall be subject to a minimum order of five hundred (500) plates;

(4) A design which shall be approved by the commissioner; and

(5) A handling fee of one dollar (\$1.00) payable to the county clerk upon issuance or renewal of any cultural, specialty earmarked, or new specialty earmarked license plate, except plates exempted from payment of fees under § 55-4-203 or any other applicable provision of this part.

(c)(1) Subsection (b) shall apply equally to the renewal of any plate issued pursuant to this part; provided, that any plate that fails to meet the minimum requirements of subdivision (b)(3) by December 31, 1999, or for two (2) successive renewal periods thereafter shall not be reissued or renewed, and the commissioner shall notify the Tennessee code commission that the section of Tennessee Code Annotated authorizing the issuance of the plate is, on the basis of inactivity, to be deemed obsolete and invalid.

(2) Any cultural or new specialty earmarked plate authorized by statute on or after July 1, 1998, shall be subject to the minimum issuance requirements of subdivision (b)(3).

(3) Any plate authorized by this part that qualifies for initial issuance on or after July 1, 1998, shall be subject to the minimum issuance requirements of subdivision (b)(3).

(d) Any plate authorized by this part that has not qualified for initial

issuance by December 31, 1999, shall not be issued and the commissioner shall notify the Tennessee code commission that the section of Tennessee Code Annotated authorizing the issuance of the plate is, on the basis of inactivity, to be deemed obsolete and invalid.

(e) Notwithstanding subsection (d), any plate authorized by statute on or after January 1, 1999, that fails to meet the minimum issuance requirements of subdivision (b)(3)(B) within one (1) year of the effective date of the act authorizing the plate shall not be issued, and the commissioner shall notify the Tennessee code commission that the section of Tennessee Code Annotated authorizing the issuance of the plate is, on the basis of inactivity, to be deemed obsolete and invalid.

(f) No plate authorized by this part that has failed to meet minimum issuance or renewal requirements and has been deemed obsolete and invalid pursuant to this section, nor a plate substantially the same in appearance or content, shall be eligible for re-issuance pursuant to this part until the expiration of a three-year period beginning on the date the plate, or a plate substantially the same in appearance or content, was deemed obsolete and invalid.

(g) Subdivision (b)(3) and subsections (c), (d), (e), (f), and (h) shall not apply to the following plates issued pursuant to this part:

- (1) Antique motor vehicle;
- (2) Dealer;
- (3) Disabled;
- (4) Emergency;
- (5) Firefighter, as provided for in § 55-4-241;
- (6) General assembly;
- (7) Government service;
- (8) Honorary consular;
- (9) Judiciary;
- (10) Memorial;
- (11) Metropolitan council;
- (12) Military;
- (13) National Guard;
- (14) Sheriff;
- (15) United States house of representatives;
- (16) United States judge; and
- (17) United States senate.

(h)(1) Notwithstanding any provision of this part to the contrary, any cultural or new specialty earmarked license plate authorized by statute on or after July 1, 2002, shall be subject to a minimum order of at least one thousand (1,000) plates prior to initial issuance. This subdivision (h)(1) shall apply equally to the renewal of any cultural or new specialty earmarked plate initially issued on or after July 1, 2002. Any such plate that does not meet the minimum order requirements of this subdivision (h)(1) within one (1) year of the effective date of the act authorizing that plate, or does not meet the renewal requirements for any two (2) successive renewal periods thereafter, shall not be issued, reissued or renewed and shall be deemed obsolete and invalid. The commissioner shall annually notify the executive secretary of the Tennessee code commission of the sections of the code authorizing the issuance of plates deemed obsolete and invalid pursuant to this subdivision (h)(1).

(2) Subdivision (h)(1) shall not apply to collegiate plates otherwise administered pursuant to this part; provided, that on and after July 1, 2002, collegiate plates for four-year colleges or universities located outside Tennessee shall be subject to a minimum order of at least one thousand (1,000) plates prior to initial issuance by the department. This subdivision (h)(2) shall apply equally to the renewal of any collegiate plates for four-year colleges or universities located outside Tennessee initially issued by the department on or after July 1, 2002. Any such plate that does not meet the minimum order requirements of this subdivision (h)(2) or does not meet the renewal requirements for any two (2) successive renewal periods, shall not be administratively issued, reissued or renewed by the department and shall be deemed obsolete and invalid.

(3)(A) Notwithstanding any provision of this part to the contrary, between July 1, 2002, and August 31, 2002, any cultural license plate authorized by § 55-4-264 shall be subject to a minimum order of at least two hundred fifty (250) plates prior to initial issuance. This subdivision (h)(3)(A) shall apply equally to the renewal of any cultural license plate authorized by § 55-4-264 and initially issued between July 1, 2002, and August 31, 2002. Any such plate that does not meet the minimum order requirements of this subdivision (h)(3)(A) or does not meet the renewal requirements for any two (2) successive renewal periods, shall not be administratively issued, reissued or renewed by the department and shall be deemed obsolete and invalid.

(B) On or after September 1, 2002, any cultural license plate authorized by § 55-4-264 shall be subject to a minimum order of at least one thousand (1,000) plates prior to initial issuance. This subdivision (h)(3)(B) shall apply equally to the renewal of any cultural license plate authorized by § 55-4-264 and initially issued on or after September 1, 2002. Any such plate that does not meet the minimum order requirements of this subdivision (h)(3)(B) or does not meet the renewal requirements for any two (2) successive renewal periods, shall not be administratively issued, reissued or renewed by the department and shall be deemed obsolete and invalid.

(i) All funds produced from the sale or renewal of cultural, specialty earmarked and new specialty earmarked license plates shall be used exclusively in Tennessee to support departments, agencies, charities, programs and other activities impacting Tennessee, as authorized pursuant to this part.

(j) Any new specialty earmarked license plate authorized by statute on or after July 1, 2008, on behalf of a nonprofit organization shall be subject to certification of the organization's nonprofit status by the secretary of state within ninety (90) days of such authorization prior to initial issuance. Any such plate authorized on behalf of a nonprofit organization that is not certified as a registered nonprofit organization in good standing with the state by the secretary of state shall be deemed obsolete and invalid.

(k) Any nonprofit organization receiving proceeds from the sale of a new specialty earmarked license plate on or after July 1, 2008, shall be subject to the following requirements:

(1) The nonprofit organization shall meet and maintain all statutory requirements and internal revenue service regulations for nonprofit corporations;

(2) Each nonprofit organization shall maintain its nonprofit status in good

standing with the secretary of state;

(3) By September 30, 2008, and September 30 each following year, all nonprofit organizations receiving proceeds from the sale or renewal of a new specialty earmarked license plate shall submit an annual accounting of all such funds received from July 1 to June 30 of the preceding state fiscal year to the comptroller of the treasury. The comptroller of the treasury may audit any nonprofit organization receiving funds from a new specialty earmarked license plate to ensure that the funds are being used in accordance with statutory authority for the plate, and the cost of the audit shall be charged to the nonprofit organization; and

(4) A nonprofit organization shall return any proceeds received from a new specialty earmarked license plate that a comptroller of the treasury's audit finds have been used in violation of statutory authority. The attorney general and reporter is authorized to institute proceedings, as defined in § 48-51-201, under the Tennessee Nonprofit Corporation Act, compiled in title 48, chapters 51-68, to recover the proceeds.

(l)(1) Notwithstanding any provision of this part to the contrary, any cultural or new specialty earmarked license plate authorized by statute on or after July 1, 2013, shall be subject to a minimum order of at least one thousand (1,000) plates prior to initial issuance. Any cultural or new specialty earmarked license plate authorized by statute shall be subject to a minimum order of at least eight hundred (800) plates for the renewal of such cultural or new specialty earmarked plates. Any such plate that does not meet the minimum order requirements of this subdivision (l)(1) within one (1) year of the effective date of the act authorizing that plate, or does not meet the renewal requirements for any two (2) successive renewal periods thereafter, shall not be issued, reissued, or renewed and shall be deemed obsolete and invalid. The commissioner shall annually notify the executive secretary of the Tennessee code commission of the sections of the code authorizing the issuance of plates deemed obsolete and invalid pursuant to this subdivision (l)(1).

(2) Subdivision (l)(1) shall not apply to collegiate plates otherwise administered pursuant to this part; provided, that on and after July 1, 2013, collegiate plates for four-year colleges or universities located outside Tennessee shall be subject to a minimum order of at least one thousand (1,000) plates prior to initial issuance by the department. The renewal of any collegiate plates for four-year colleges or universities located outside Tennessee issued by the department on or after July 1, 2013, shall be subject to a minimum order of at least eight hundred (800) plates. Any such plate that does not meet the minimum order requirements of this subdivision (l)(2) or does not meet the renewal requirements for any two (2) successive renewal periods, shall not be administratively issued, reissued, or renewed by the department and shall be deemed obsolete and invalid.

#### **55-4-202. Issuance — Category — Supplemental registration — Eligibility.**

(a) All registration plates issued under this part shall be issued in one (1) of the following categories:

- (1) Antique motor vehicle;
- (2) Cultural;

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- (3) Dealer;
- (4) Disabled;
- (5) Emergency;
- (6) Firefighter;
- (7) General assembly;
- (8) Government service;
- (9) Judiciary;
- (10) Memorial;
- (11) National Guard;
- (12) New specialty earmarked;
- (13) OEM headquarters company;
- (14) Sheriff;
- (15) Specialty earmarked;
- (16) United States house of representatives;
- (17) United States judge; and
- (18) United States senate.

(b)(1) Registration plates currently provided under the “dealer”, “government service”, “disabled”, and “national guard” categories shall be issued in design configurations and colors which distinguish the plates from those of other categories, and in a manner which would avoid confusion with any other registration plates.

(2) Registration plates issued in any other category shall be issued in a design configuration distinctive to that category and determined by the commissioner, and shall bear at the top of the plate the word “Tennessee” or “Tenn” and at the bottom the name of the category. In addition, the plates in each category may bear identifying letter prefixes to distinguish the group within the category, and shall bear identifying number suffixes to identify the individual registrant.

(c) The groups within each category having multiple plates shall be as follows:

- (1) Emergency:
  - (A) Amateur radio;
  - (B) Auxiliary police;
  - (C) Civil air patrol;
  - (D) Civil defense;
  - (E) Rescue squad;
  - (F) Emergency services squad, including, but not limited to, emergency medical technicians and paramedics;
  - (G) Police officer;
  - (H) Trauma physicians;
  - (I) Trauma nurses;
  - (J) On-call surgical personnel;
  - (K) Tennessee state guard; and
  - (L) United States coast guard auxiliary;
- (2) Judiciary:
  - (A) Supreme court;
  - (B) Court of appeals;
  - (C) Court of criminal appeals;
  - (D) Chancery court;
  - (E) Circuit court;
  - (F) Probate court;

- (G) Juvenile court;
- (H) General sessions court;
- (I) Retired judges of courts, not-of-record;
- (J) Municipal court judges; and
- (K) Magistrates;
- (3) National Guard:
  - (A) Enlisted;
  - (B) Honorably discharged members;
  - (C) Officers; and
  - (D) Retirees;
- (4) Memorial:
  - (A) Air Force Cross recipient;
  - (B) Disabled veteran;
  - (C) Distinguished Flying Cross recipients;
  - (D) Distinguished Service Cross recipient;
  - (E) Former prisoner of war;
  - (F) Gold star family;
  - (G) Holder of the Purple Heart;
  - (H) Medal of honor recipient; and
  - (I) Navy Cross recipient;
- (5) Cultural:
  - (A) Arts, as provided for in § 55-4-218 and § 55-4-264;
  - (B) Collegiate, as defined in § 55-4-209:
    - (i)(a) Bryan College;
    - (b) Section 55-4-201(f) shall not apply to subdivision (c)(5)(B)(i)(a);
    - (ii) Penn State University;
    - (iii) University of Arkansas;
    - (iv) University of Florida;
    - (v) University of Mississippi;
    - (vi) All collegiate plates issued as cultural motor vehicle registration plates prior to July 1, 1998; and
    - (vii) All collegiate plates administratively issued by the department on or after July 1, 1998, pursuant to § 55-4-210;
  - (C) Honorary consular;
  - (D) Metropolitan council;
  - (E) Military:
    - (i) Air Medal recipients;
    - (ii) Blue star family;
    - (iii) Bronze Star recipients;
    - (iv) Combat veterans;
    - (v) "Enemy Evadees" as certified by the department of veterans' affairs;
    - (vi) Handicapped Veteran;
    - (vii) Honorably discharged veterans of the United States Armed Forces;
    - (viii) Marine Corps League;
    - (ix) Pearl Harbor survivors;
    - (x) Silver Star recipients;
    - (xi) Submarine veteran;
    - (xii) Tennessee woman veteran, pursuant to § 55-4-292;
    - (xiii) United States military, active forces, pursuant to § 55-4-244;

- (xiv) United States military, honorably discharged members, pursuant to § 55-4-244;
- (xv) United States military, retired forces, pursuant to § 55-4-244;
- (xvi) United States reserve forces, pursuant to § 55-4-242;
- (xvii) United States reserve forces, honorably discharged members, pursuant to § 55-4-244; and
- (xviii) United States reserve forces, retired, pursuant to § 55-4-244;
- (F) Personalized, pursuant to §§ 55-4-210 and 55-4-211;
- (G) Police Benevolent Association; and
- (H) Tennessee Walking Horse;
- (6) Specialty earmarked:
  - (A) Agriculture;
  - (B) Alpha Kappa Alpha Sorority;
  - (C) Alpha Phi Alpha;
  - (D) CHILDREN FIRST!;
  - (E) Delta Sigma Theta Sorority, Inc.;
  - (F) Ducks Unlimited;
  - (G) Environmental;
  - (H) Friends of Great Smoky Mountains;
  - (I) Helping school volunteer;
  - (J) Kappa Alpha Psi;
  - (K) Mothers Against Drunk Driving (MADD);
  - (L) Non-game and endangered wildlife species or “Watchable Wildlife”;
  - (M) Omega Psi Phi;
  - (N) Phi Beta Sigma;
  - (O) Supporters of Saint Jude Children’s Research Hospital; and
  - (P) Zeta Phi Beta; and
- (7) New specialty earmarked plates, as defined in § 55-4-209:
  - (A) Adoption;
  - (B) Almost Home Animal Rescue;
  - (C) Alpha Eta Rho International Aviation Fraternity;
  - (D) Animal Friendly;
  - (E) Appalachian Trail;
  - (F) Autism Awareness;
  - (G) Choose Life;
  - (H) Civil War Preservation;
  - (I) Concerned Motorcyclists of Tennessee/American Bikers Active Towards Education;
  - (J) “Driving To A Cure” (Pink Ribbon);
  - (K) Eagle Foundation;
  - (L) East Tennessee Children’s Hospital;
  - (M) Fish and wildlife species;
  - (N) Harpeth River Watershed Association;
  - (O) Historic Collierville;
  - (P) Historic Franklin;
  - (Q) I RECYCLE;
  - (R) International Association of Firefighters;
  - (S) Juvenile Diabetes Research Foundation;
  - (T) Le Bonheur Children’s Medical Center;
  - (U) Masons;
  - (V) Memphis Rock ‘n’ Soul Museum;

- (W) Nashville Predators;
- (X) National Rifle Association;
- (Y) Native American Indian Association;
- (Z) Niswonger Children's Hospital;
- (AA) Northwest Tennessee Disaster Services;
- (BB) Nurses;
- (CC) Radnor Lake;
- (DD) Regional Medical Center at Memphis (The MED);
- (EE) Safe Schools;
- (FF) Share the Road;
- (GG) Smallmouth bass;
- (HH) Sons of Confederate Veterans;
- (II) Sons of the American Revolution;
- (JJ) Sportsman;
- (KK) Suicide Prevention;
- (LL) Support Our Troops;
- (MM) Tennessee Association of Realtors;
- (NN) Tennessee Federation of Garden Clubs;
- (OO) Tennessee Fraternal Order of Police;
- (PP) Tennessee Sheriffs' Association;
- (QQ) Tennessee Tech University;
- (RR) Tennessee Tennis;
- (SS) Tennessee Theatre;
- (TT) Tennessee Titans;
- (UU) Tennessee Wildlife Federation;
- (VV) Tennessee Wildlife Federation non-game and education programs;
- (WW) Trout Unlimited;
- (XX) University of Tennessee Lady Volunteers' NCAA National Championships;
- (YY) University of Tennessee National Championship;
- (ZZ) Vanderbilt Children's Hospital;
- (AAA) Vanderbilt University Athletic Department;
- (BBB) Youth Villages.

(d)(1) No registration plate shall be issued under this section unless authorized by this part. Registration under this part is supplemental to the motor vehicle title and registration law, compiled in chapters 1-6 of this title, and nothing in this part shall be construed as abridging or amending that law. An applicant with more than one (1) motor vehicle titled or leased in that applicant's name, or applicants with more than one (1) motor vehicle jointly titled and/or leased in their names are entitled to an unlimited number of registration plates under the applicable provision of law, as long as all other special fees and regular costs are paid by the applicant and all requirements set out in parts 1 and 2 of this chapter are followed.

(2) No qualified person shall receive more than one (1) free plate, unless the issuance of additional free plates is specifically authorized by the statute creating the cultural, specialty earmarked or new specialty earmarked plate, memorial plate or special purpose plate.

(e) Registration plates issued to United States judges, United States senators, and members of the United States house of representatives pursuant to subdivisions (a)(9) and (a)(16)-(18) shall be of a distinctive design approved by the department and shall bear, as applicable, the district number of house

members, the number “1” or “2” for senators, based on seniority, and the appropriate number for judges, based on seniority of appointment. Unless a conflict exists with other designs, the designs used before July 1, 1984, shall be used.

(f) Whenever a spouse having a cultural, specialty earmarked or new specialty earmarked plate, memorial plate or special purpose plate is divorced and no longer entitled to the plate, the spouse no longer entitled to that plate shall deliver the plate to the county clerk, and the county clerk shall issue a regular plate valid for the same period as the cultural, specialty earmarked or new specialty earmarked plate, memorial plate or special purpose plate.

(g)(1) Registration plates issued to honorary consulars pursuant to subdivision (c)(5)(C) shall be of a distinctive design approved by the department and shall bear, as applicable, the words “Honorary Consul” and an appropriate number.

(2) The revised honorary consular plates issued pursuant to this section shall be delivered to qualified persons upon renewal of registration of the vehicle to which the plates are issued. No person with honorary consular plates shall be required to exchange the plates until the renewal of registration of the vehicle to which the plates are issued.

#### **55-4-203. Fees.**

(a) In addition to title, registration, transfer or other fees or taxes otherwise applicable under this title, persons applying for and receiving registration plates under this part shall pay additional fees as follows:

(1) Antique motor vehicle — twenty-five dollars (\$25.00), pursuant to § 55-4-111(a)(1) Class C and as provided for in § 55-4-111(b);

(2) Dealers, as provided for in § 55-4-221;

(3) Disabled — regular fee applicable to the vehicle, except as expressly provided otherwise in § 55-21-103;

(4) Emergency:

(A) Amateur radio:

(i) Regular fee applicable to the vehicle, if the applicant meets the qualifications of § 55-4-229(e); or

(ii) Twenty-five dollars (\$25.00), if the applicant does not meet the qualifications of § 55-4-229(e);

(B) On-call surgical personnel — regular fee applicable to the vehicle and as provided for in § 55-4-222(i);

(C) Police officer — regular fee applicable to the vehicle and as provided for in § 55-4-222(f);

(D) Regular fee applicable to the vehicle and as provided for in § 55-4-222 for the following special purpose plates:

(i) Auxiliary police;

(ii) Civil air patrol;

(iii) Civil defense;

(iv) Emergency services squad, including, but not limited to, emergency medical technicians and paramedics; and

(v) Rescue squad;

(E) Tennessee state guard — regular fee applicable to the vehicle and a fee proportionately equal to the cost of actually designing and manufacturing the plates to ensure that the issuance of the plates is revenue

neutral; provided, that the fee shall only be applicable upon initial issuance or re-issuance of the plates provided for in this section and shall not be applicable at the time of renewal;

(F) Trauma nurses — regular fee applicable to the vehicle and as provided for in § 55-4-222(h);

(G) Trauma physicians — regular fee applicable to the vehicle and as provided for in § 55-4-222(g); and

(H) United States coast guard auxiliary — regular fee applicable to the vehicle and a fee proportionately equal to the cost of actually designing and manufacturing the plates to ensure that the issuance of the plates is revenue neutral; provided, that the fee shall only be applicable upon initial issuance or re-issuance of the plates provided for in this section and shall not be applicable at the time of renewal;

(5) Firefighter — regular fee applicable to the vehicle and as provided for in § 55-4-241;

(6) General assembly — twenty-five dollars (\$25.00);

(7) Government service — as provided for in § 55-4-223;

(8) Judiciary — twenty-five dollars (\$25.00);

(9) National guard: enlisted, officers, retirees and honorably discharged members — as provided for in § 55-4-228;

(10) Sheriff — twenty-five dollars (\$25.00);

(11) Street rod — fifty dollars (\$50.00) and as provided for in § 55-4-230 [obsolete];

(12) United States house of representatives — twenty-five dollars (\$25.00);

(13) United States judge — twenty-five dollars (\$25.00); and

(14) United States senate — twenty-five dollars (\$25.00).

(b) The following plates shall be issued free of charge and in the number specified by the section authorizing the issuance of the individual plate; provided, that the appropriate criteria are met by the applicant:

Memorial:

(1) Air Force Cross recipients;

(2) Disabled Veterans, including those disabled veterans who choose to receive the Purple Heart plate pursuant to § 55-4-239(e);

(3) Distinguished Flying Cross recipients;

(4) Distinguished Service Cross recipients;

(5) Former Prisoner of War;

(6) Gold star family;

(7) Holder of the Purple Heart;

(8) Medal of Honor recipients; and

(9) Navy Cross recipients.

(c)(1) The following military cultural plates shall be issued upon the payment of the regular registration fee and a fee equal to the cost of actually designing and manufacturing the plates; provided, that the issuance of these plates shall be revenue neutral:

(A) Air Medal recipients;

(B) Blue Star family;

(C) Bronze Star recipients;

(D) Combat veterans;

(E) "Enemy Evadees," as certified by the department of veterans' affairs, pursuant to § 55-4-243;

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- (F) Handicapped veteran;
- (G) Honorably discharged veterans of the United States armed forces, pursuant to § 55-4-253;
- (H) Marine Corps League;
- (I) Pearl Harbor survivors, pursuant to § 55-4-238;
- (J) Silver Star recipients;
- (K) Submarine veteran;
- (L) Tennessee woman veteran, pursuant to § 55-4-292;
- (M) United States military, active forces, pursuant to § 55-4-244;
- (N) United States military, honorably discharged members, pursuant to § 55-4-244;
- (O) United States military, retired, pursuant to § 55-4-244;
- (P) United States reserve forces, honorably discharged members, pursuant to § 55-4-244;
- (Q) United States reserve forces, pursuant to § 55-4-242; and
- (R) United States reserve forces, retired, pursuant to § 55-4-244.

(2) Notwithstanding any law to the contrary, the payment of the fee equal to the cost of actually designing and manufacturing the plates provided in subdivision (c)(1) shall only be applicable upon initial issuance or re-issuance of the plates specified in subdivision (c)(1) and shall not be applicable at the time of renewal.

(d) All other cultural, specialty earmarked and new specialty earmarked plates authorized by this part shall be issued upon the payment of a fee of thirty-five dollars (\$35.00), in addition to the regular registration fee, in accordance with § 55-4-201(b)(2).

(e) OEM headquarters company plates shall be issued free of charge as provided for in § 55-4-232.

#### **55-4-209. Part definitions.**

As used in this part:

(1) “Collegiate plate” or “collegiate license plate” means the class of cultural motor vehicle registration plates enumerated in § 55-4-202(c)(5)(B), which features on each individual plate a special reference to or identification or information on:

(A) A two-year or four-year college or university located within this state; or

(B) A four-year college or university located outside this state;

(2)(A) “Cultural plate” or “cultural license plate” means:

(i) A special or cultural motor vehicle registration plate authorized by statute prior to July 1, 1998, and enumerated in § 55-4-202(c)(5); or

(ii) An honorary motor vehicle registration plate authorized by statute on or after July 1, 1998, which statute does not specifically earmark the funds produced from the sale of the plate;

(B) “Cultural plate” or “cultural license plate” includes collegiate plates and personalized plates unless those plates are specifically excluded from this definition by statute;

(3) “Memorial plate” or “memorial license plate” means those motor vehicle registration plates, as enumerated in § 55-4-202(c)(4) and defined in § 55-4-240, that are issued free of charge, including the regular registration fee, pursuant to § 55-4-203(b);

(4) “New specialty earmarked plate” or “new specialty earmarked license plate” means a motor vehicle registration plate authorized by statute on or after July 1, 1998, which statute earmarks the funds produced from the sale of that plate to be allocated to a specific nonprofit organization or state agency or fund to fulfill a specific purpose or to accomplish a specific goal;

(5) “Personalized plate” or “personalized license plate” means the class of cultural motor vehicle registration plates that features on each individual plate not less than three (3) nor more than seven (7) identifying numbers, letters, positions or a combination thereof for a passenger motor vehicle, recreational vehicle or truck of one-half or three-quarter-ton rating or, if authorized, not less than three (3) nor more than six (6) identifying numbers, letters, positions or a combination thereof for a motorcycle, as requested by the owner or lessee of the vehicle to which that plate is assigned;

(6) “Personalized trailer plate” or “personalized trailer license plate” means a motor vehicle registration plate that is permitted, but not required, to be registered to a trailer or semitrailer that features on each individual plate not less than three (3) nor more than seven (7) identifying numbers, letters, positions or a combination of numbers, letters or positions for a trailer or semitrailer, as requested by the owner or lessee of the trailer or semitrailer to which the plate is assigned;

(7) “Special purpose plate” or “special purpose license plate” means all other motor vehicle registration plates issued pursuant to this part, including antique motor vehicle, dealer, disabled, emergency, firefighter pursuant to § 55-4-241, general assembly, government service, judiciary, national guard, OEM headquarters company, sheriff, special event, United States house of representatives, United States judge and United States senate plates; and

(8) “Specialty earmarked plate” or “specialty earmarked license plate” means a motor vehicle registration plate authorized by statute prior to July 1, 1998, and enumerated in § 55-4-202(c)(6), which statute earmarks the funds produced from the sale of that plate to be allocated to a specific organization, state agency or fund, or other entity to fulfill a specific purpose or to accomplish a specific goal.

#### **55-4-213. Promotional campaign.**

(a) To increase public knowledge of the availability of cultural, specialty earmarked and new specialty earmarked motor vehicle registration plates, the department shall conduct a promotional campaign, which shall include, but not be limited to, the inclusion of applications for, and information about, these plates with motor vehicle registration renewal notices.

(b) The promotional campaign authorized in subsection (a) shall include, but not be limited to:

(1) The inclusion of the following information in the motor vehicle registration renewal notices:

(A) An application for cultural, specialty earmarked and new specialty earmarked plates;

(B) An explanation of the formula by which the additional fees for each plate are allocated; and

(C) An illustration of the plates, selected in consultation with the transportation and safety committee of the senate and transportation

committee of the house of representatives; and

(2) The creation and distribution of a chart containing an illustration and the information required by subdivision (b)(1)(B) for each cultural, specialty earmarked and new specialty earmarked plate at each county clerk's office. The chart shall be printed on paper eight and one-half inches by seven inches (8½" x 7").

(c) For any insert included in the mailing of renewal notices which originates from a county and which causes the total postal weight to be over one ounce (1 oz.) as permitted by the United States postal service, the county shall pay the increased cost of mailing. However, the weight of any notice of a vehicle emissions testing requirement shall not be included in the calculation of the total weight.

#### **55-4-221. Dealers.**

(a) Registration plates issued under the dealer category may be issued to manufacturers, dealers and transporters of motor vehicles as provided for in this part.

(b)(1) Any dealer owning any vehicle that may be legally operated upon the streets or highways of this state with a regular vehicle registration may, either in person or through a duly authorized agent or employee, operate or move the vehicle upon any highway of the state without registering each such vehicle, upon condition that the vehicle display a special purpose plate issued to that owner as prescribed in this part. The dealer may further authorize the operation of the vehicle bearing such plates by customers for temporary purposes not to exceed seventy-two (72) hours. The dealer may further authorize the operation of the vehicle bearing such plates by any customer who is using the vehicle, without charge, while the customer's vehicle is being serviced or repaired by the dealer or by any person who is participating in a driver's education program and is operating a vehicle that was provided by the dealer to a school for use in the driver's education program.

(2) The special purpose dealer plate shall have the legend "TENN" at the top of the plate and shall have "auto dealer" at the bottom of the plate. The legend shall contain the letter "D" and five (5) numbers. The special purpose dealer plate for a motor vehicle dealer that sells used motor vehicles shall have a red background and white letter and numbers. The special purpose dealer plate for a franchise motor vehicle dealer that sells new motor vehicles shall have a white background and black letter and numbers.

(3) Any dealer who has a valid number assigned by the motor vehicle commission may make application to the department for one (1) or more special purpose plates. The fee for the first plate is forty-seven dollars and thirty cents (\$47.30), and the fee for any plates in addition to the first plate is twenty-three dollars and sixty-five cents (\$23.65) for each additional plate. No dealer shall be permitted to purchase more than two hundred twenty-five (225) auto dealer plates during a registration year.

(4) A transporter may operate or move any vehicle that may be legally operated under a regular vehicle registration upon any highway within this state solely for the purpose of delivery, upon likewise displaying thereon like plates issued to the transporter as provided in this part.

(5) Any vehicle preparation service or motor vehicle auction company licensed by the state may obtain special purpose plates to operate or move

dealer-owned vehicles upon any highway within the state solely for the purpose of transporting the vehicles between a dealer's business location and the location where the cleaning, repairing, or preparation is performed or where the vehicle is to be auctioned, and for the purposes of testing the vehicle within a twenty (20) mile radius of the location where the cleaning, repairing or preparation is performed.

(6) This subsection (b) shall not apply to work or service vehicles owned by a manufacturer, transporter or dealer.

(c)(1) Any manufacturer or transporter may make application to any county clerk within the state, and any vehicle preparation service may make application to the county clerk of the county where the established place of business of the service is located, upon appropriate forms for a certificate and for one (1) or more special purpose plates or single special purpose plates as appropriate to vehicles subject to registration hereunder, which plates shall be of the same color as auto dealer plates issued in the state for the particular year in question and on which shall appear the letters "DL" and identifying numbers. An applicant for these registration plates who is a transporter shall submit proof of the applicant's status as a bona fide transporter that may reasonably be required by the county clerk to whom the application is made. If the applicant is a manufacturer, the county clerk shall not issue the registration plates until the applicant has registered with the county clerk to whom the application is made the number of the current license issued to such manufacturer by the motor vehicle commission. For registering the license number of such manufacturers and dealers, the county clerk shall be entitled to a fee of five dollars (\$5.00).

(2) The county clerk, upon granting an application, shall, upon the payment of the appropriate fee, issue to the applicant a certificate containing the applicant's name and address.

(3) All special purpose plates issued to any vehicle preparation service, manufacturer, or transporter shall bear identifying numbers, and no special purpose plates issued to other vehicle preparation services, manufacturers, or transporters shall bear the same number.

(4) The commissioner is authorized and empowered to design, issue and regulate the use of temporary plates for use in cases where dealer plates cannot be used. Upon the depletion of the department's current inventory of temporary plates, the department shall redesign the temporary plates in such a manner as determined by the commissioner as will permit the conspicuous display of individual distinctive alpha-numerical characters. Temporary plates may be issued for a period of thirty (30) days. The fee for the thirty-day plate is five dollars and fifty cents (\$5.50). No person may operate a motor vehicle for more than sixty (60) days with the temporary plate. Nothing in this section shall be construed as a grant of authority for the issuance or use of the temporary plates on trucks or truck tractors being used or tested under load conditions over the streets and highways of this state.

(d)(1) Registration plates issued under this subsection (d) may only be issued to dealers as provided for in this subsection (d).

(2) Any dealer owning a vehicle suitable for special event services may, either in person or through a duly authorized agent, employee, or lessee, operate or move the vehicle upon any highway of the state without registering such vehicle, upon condition that the vehicle display a special

event plate issued to that owner as prescribed in this part.

(3) A vehicle is suitable for special event services if it:

(A) Is rented to legal entities of this state, or any political subdivision thereof, pursuant to a rental agreement;

(B) Only travels in this state during the rental period;

(C) Is capable of holding fifteen (15) or more passengers; and

(D) Has fewer than two thousand five hundred (2,500) miles on the odometer.

(4) Notwithstanding any statute to the contrary, a vehicle meeting all of the criteria of a special event services vehicle pursuant to subdivision (d)(3) shall not be eligible to use a special purpose dealer plate.

(5) The special event plate shall have the legend "TENN" at the top of the plate and shall have "Special Event" at the bottom of the plate. The legend shall contain the letters "SE" and five (5) numbers. The special event plates shall have a light blue background with black letters and numbers.

(6) Any dealer who has a valid number assigned by the motor vehicle commission may make application to the department for one (1) or more special event plates and shall provide sufficient information as reasonably requested by the commissioner to show how many vehicles are suitable for special event services. The fee for such plate shall be more than one hundred fifty-two dollars and sixty-three cents (\$152.63). No dealer shall be permitted to purchase more than one hundred (100) special event plates during a registration year.

(e)(1) Except as provided in subdivision (e)(2), the special purpose plates issued under this section shall expire on May 31 of each year, and a new plate or plates for the ensuing year may be obtained by the person to whom the expired plate or plates were issued upon application to the registrar of motor vehicles, or the registrar's deputy as provided by law. Issuance of the plates shall begin May 1 of each year, upon payment of the fee provided by law, and proof by the applicant that the applicant is still engaged in business as a manufacturer, transporter, dealer or vehicle preparation service.

(2) In the year in which the issuance of such plates shall be valid for a period of fourteen (14) months pursuant to this section, the fee provided by law shall be computed as seven-sixths ( $\frac{7}{6}$ ) times the regular annual fee. The intent of this subdivision (e)(2) is to provide that the annual fee be increased by a pro-rata portion to cover the additional two (2) months fee during the transition year of implementation of this new schedule. Issuance of the plates pursuant to this subdivision (e)(2) shall begin on March 1 of the year so affected, upon payment of the appropriate fee, and proof by the applicant that such applicant is still engaged in business as a manufacturer, transporter, dealer or vehicle preparation service.

(f) The commissioner is authorized and empowered to promulgate rules and regulations for the administration of this section.

#### **55-4-230. Native American Indian Association.**

(a) An owner or lessee of a motor vehicle who is a resident of this state upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided in § 55-4-203, shall be issued a Native American Indian Association new specialty earmarked license plate for a motor vehicle autho-

rized by § 55-4-210(c).

(b) The new specialty earmarked license plates shall be of an appropriate design representative of the Native American Indian Association of Tennessee, Inc. The plates shall be designed in consultation with the Native American Indian Association of Tennessee, Inc.

(c) The funds produced from the sale of the Native American Indian Association new specialty earmarked license plates shall be allocated to the Native American Indian Association of Tennessee, Inc., in accordance with § 55-4-215. The funds shall be used exclusively for the association's emergency assistance and education program, which provides services to American Indians in Tennessee, including emergency assistance, educational services, job training, and health services in times of crisis.

#### **55-4-231. Silver Star, Bronze Star and Air Medal recipients.**

(a) A recipient of the Silver Star, the Bronze Star, or the Air Medal who is a resident of this state and who is an owner or lessee of a motor vehicle, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and upon paying the regular fee applicable to the motor vehicle and the fee provided in § 55-4-203, shall be issued a distinctive Air Medal, Silver Star, or Bronze Star motor vehicle registration plate, as appropriate, for a motor vehicle authorized by § 55-4-210(c).

(b)(1) The Silver Star plates provided for in this section shall include an identification legend distinctive to recipients of the Silver Star. The legend shall read "Silver Star." The registration number of the plate shall include the letters "SS" and a unique identifying number.

(2) The Bronze Star plates provided for in this section shall include an identification legend distinctive to recipients of the Bronze Star. The legend shall read "Bronze Star." The registration number of the plate shall include the letters "BS" and a unique identifying number.

(3) The Air Medal plates provided for in this section shall include an identification legend distinctive to recipients of the Air Medal. The legend shall read "Air Medal." The registration number of the plate shall include the letters "RE" and a unique identifying number.

(c) Eligibility for Air Medal plates, Silver Star plates, and Bronze Star plates shall be determined by the department by consulting the appropriate information on the DD214 form, or in a case of military service predating 1950, in consultation with appropriate information on the equivalent form or on other official documentation, or a written communication from the department of veterans affairs, the form, documentation or communication certifying that the application for the plate is submitted by a recipient of the Silver Star, the Bronze Star, or the Air Medal, as appropriate.

#### **55-4-232. OEM headquarters company.**

(a) Registration plates issued under the OEM headquarters company category pursuant to § 55-4-202(a) may be issued to any OEM headquarters company for purposes of registering any OEM headquarters company vehicle. Eligible employees and eligible family members may operate an OEM headquarters company vehicle on any highway within this state upon displaying thereon plates issued to the OEM headquarters company as provided in this part. A registration plate issued under the OEM headquarters company category may only be transferred to another qualified OEM headquarters

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company vehicle.

(b) The special purpose OEM headquarters company plates provided for in this section shall be designed by the commissioner in consultation with the OEM headquarters company making application for the plate. All special purpose plates issued to any OEM headquarters company shall bear identifying numbers and shall display the word "Tennessee" or an abbreviation thereof.

(c) This registration shall be valid so long as title to the OEM headquarters company vehicle is vested in the OEM headquarters company and shall not be subject to the provisions of this chapter requiring annual registration.

(d) Any OEM headquarters company may make application to the department for the special purpose plates authorized by this section. The plates shall be free of charge, as provided in § 55-4-203.

(e) Any motor vehicle registered for use as an OEM headquarters company vehicle under this section shall, at the termination of such use, be sold at an auction limited to any dealer who sells new or unused motor vehicles of the same line-make as the motor vehicle to be sold.

#### **55-4-233. Congressional Medal of Honor.**

(a) Notwithstanding any other law to the contrary, the department shall provide and issue, free of charge, to each resident of this state who is a recipient of the Congressional Medal of Honor, upon presentation of proper application, Medal of Honor memorial registration plates for no more than two (2) motor vehicles or motor homes which are registered or leased for private use in the name of any one (1) recipient. For the purposes of this section, "private use" vehicle means any motor vehicle authorized by § 55-4-210(c) or motor home that is not used for hire or for any other commercial purpose.

(b) The Medal of Honor memorial plates provided for in this section shall be the same as regular registration plates, but shall be of a distinctive design which denotes the importance of these distinguished veterans and the high regard in which this state holds the heroic recipients of the highest military decoration. The legend shall read "Medal of Honor." The registration number of the plate shall include the letters "CM" and a unique identifying number.

(c)(1) Notwithstanding any other law to the contrary, eligibility for the Medal of Honor memorial plate shall be determined by the department by consulting the appropriate information on the:

(A) DD214 form and a copy of the orders that awarded the medal or copy of the certificate or citation granting the medal, in the case of an applicant who has been discharged from the armed forces;

(B) Copy of the orders that awarded the medal or copy of the certificate or citation granting the medal, in the case of an applicant who has not been discharged from the armed forces; or

(C) A written communication from the department of veterans affairs, in the case of an applicant who does not possess the documentation required by subdivision (c)(1)(A) or (c)(1)(B).

(2) The form, documentation or communication required by subdivision (c)(1) shall certify that the application for the plate is submitted by a recipient of the Congressional Medal of Honor.

(3) Any person issued a Medal of Honor plate under this chapter prior to June 21, 2013, shall submit to the department of revenue the appropriate

information required by this subsection within thirty (30) days after June 21, 2013. If any such person to whom a Medal of Honor plate has been issued does not comply with this subdivision (c)(3) or the department of revenue determines that the person is not eligible for the plate, the person shall surrender the plate to the county clerk of the county of the person's residence within thirty (30) days of noncompliance or determination of ineligibility, whichever is sooner.

**55-4-236. Distinguished Service Cross, Distinguished Flying Cross, Navy Cross and Air Force Cross.**

(a) The department shall provide and issue, free of charge, to each resident of this state who is a recipient of the Distinguished Service Cross, the Distinguished Flying Cross, the Navy Cross or the Air Force Cross, upon presentation of proper application, memorial registration plates for no more than two (2) motor vehicles or motor homes which are registered or leased for private use in the name of any one (1) recipient. For the purposes of this section, "private use" vehicle means any motor vehicle authorized by § 55-4-210(c) or motor home that is not used for rehire or for any other commercial purpose.

(b) The memorial plates provided for in this section shall be the same as regular registration plates, but shall be of a distinctive design which denotes the importance of these distinguished veterans and the high regard in which this state holds the courageous recipients of these military decorations.

(c)(1) Notwithstanding any provision of this section or any other law to the contrary, eligibility for the memorial plates provided for in this section shall be determined by the department by consulting the appropriate information on the:

(A) DD214 form and a copy of the orders that awarded the medal or copy of the certificate or citation granting the medal, in the case of an applicant who has been discharged from the armed forces;

(B) Copy of the orders that awarded the medal or copy of the certificate or citation granting the medal, in the case of an applicant who has not been discharged from the armed forces; or

(C) A written communication from the department of veterans affairs, in the case of an applicant who does not possess the documentation required by subdivision (c)(1)(A) or (c)(1)(B).

(2) The form, documentation, or communication required by subdivision (c)(1) shall certify that the application for the plate is submitted by a recipient of the military decorations described in this section, as appropriate.

**55-4-240. Memorial registration plates.**

Memorial registration plates shall be issued in accordance with this part and § 55-4-235 pertaining to former prisoners of war, § 55-4-233 pertaining to recipients of the Congressional Medal of Honor, § 55-4-236 pertaining to recipients of the Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross and Navy Cross, and § 55-4-237 pertaining to disabled veterans.

**55-4-246. Concerned Motorcyclists of Tennessee/American Bikers Active Toward Education.**

(a) An owner or lessee of a motor vehicle who is a resident of this state upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided in § 55-4-203, shall be issued a Concerned Motorcyclists of Tennessee/American Bikers Active Toward Education new specialty earmarked license plate for a motor vehicle authorized by § 55-4-210(c).

(b) The new specialty earmarked license plates shall contain the official Concerned Motorcyclists of Tennessee/American Bikers Active Toward Education, Inc., (C.M.T./A.B.A.T.E.) logo “dyin 2b seen” or other appropriate design representative of C.M.T./A.B.A.T.E. and shall be designed in consultation with C.M.T./A.B.A.T.E.

(c) The funds produced from the sale of the Concerned Motorcyclists of Tennessee/American Bikers Towards Education new specialty earmarked license plates shall be allocated to C.M.T./A.B.A.T.E., in accordance with § 55-4-215. The funds shall be used to assist motorcyclists involved in accidents caused by uninsured motorists with cost of living expenses while the motorcyclists are unable to work. The board of trustees of C.M.T./A.B.A.T.E., as appointed by the board of directors, shall administer the collection and disposition of the funds allocated pursuant to this section.

(d) Subject to the requirements of § 55-4-201, the commissioner is authorized and shall issue a license plate to an owner or lessee of a motorcycle who is otherwise eligible for a Concerned Motorcyclists of Tennessee/American Bikers Toward Education plate under this section; provided, however, that the owner or lessee shall comply with the state motor vehicle laws relating to registration and licensing of motorcycles and shall pay the regular fee applicable to motorcycles and the applicable fee specified in § 55-4-203 prior to the issuance of the plate. The motorcycle plates authorized by this subsection shall be substantially the same in design and configuration, allowing for variations due to size restrictions, as the regular motor vehicle registration plates authorized by § 55-4-202(c)(7), as applicable.

(e) For the purposes of § 55-4-201(h)(1), all license plates authorized or issued pursuant to subsections (a) and (d) shall be included jointly in any determinations for initial issuance and continuation of issuance.

**55-4-248. Masons.**

(a) An owner or lessee of a motor vehicle who is a resident of Tennessee, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided for in § 55-4-203, shall be issued a Masons new specialty earmarked license plate for a motor vehicle authorized by § 55-4-210(c).

(b) The application for the new specialty earmarked plates shall be accompanied by proof, satisfactory to the commissioner, certifying that the applicant is a member of the Free and Accepted Masons.

(c) The new specialty earmarked plates provided for in this section shall contain the logo of the Free and Accepted Masons and shall be designed in consultation with the Grand Lodge of the Free and Accepted Masons of the state of Tennessee.

(d)(1) Subject to the requirements of § 55-4-201, the commissioner is authorized and shall issue a registration plate to an owner or lessee of a motorcycle who is otherwise eligible for a Masons new specialty earmarked license plate; provided, however, that the owner or lessee shall comply with the state motor vehicle laws relating to registration and licensing of motorcycles and shall pay the regular fee applicable to motorcycles and the applicable fee specified in § 55-4-203 prior to the issuance of the plate.

(2) The motorcycle plates authorized by this section shall be substantially the same in design and configuration, allowing for variations due to size restrictions, as the regular motor vehicle registration plates authorized by § 55-4-202(c)(7), as applicable.

(e) Funds produced from the sale of the Masons new specialty earmarked license plates shall be allocated to the Masonic Widows' and Orphans' Home of Tennessee fund in accordance with § 55-4-215.

(f) Upon the death of the spouse who was entitled to receive the Masons new specialty earmarked license plate, the widow shall be entitled to receive a Masons new specialty earmarked license plate for a motor vehicle owned or leased by such widow, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided for in § 55-4-203. The application shall be accompanied by a copy of the death certificate.

#### **55-4-253. Honorably discharged veterans.**

(a) An owner or lessee of a motor vehicle who is a resident of this state and who is an honorably discharged veteran of the United States armed forces, or a civilian veteran of the United States army corps of engineers, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and upon paying the regular fee applicable to the motor vehicle and the fee provided in § 55-4-203, shall be issued an honorably discharged veteran registration plate for a motor vehicle authorized by § 55-4-210(c). A surviving spouse of such a deceased honorably discharged veteran, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles, upon paying the regular fee applicable to the vehicle and the fee prescribed by § 55-4-203, and upon providing a copy of the death certificate of the deceased honorably discharged veteran, shall be issued a registration plate pursuant to this section, until the surviving spouse remarries.

(b) All applications pursuant to this section shall be accompanied by orders or a statement of discharge from the appropriate branch of the United States armed forces classifying the applicant as an honorably discharged veteran, or by orders or official documentation from the United States army corps of engineers classifying the applicant as a civilian veteran; provided, that, notwithstanding any law to the contrary, an honorably discharged veteran of the United States armed forces or a surviving spouse of an honorably discharged veteran of the United States armed forces shall be required to submit the required documentation only when initially applying for registration plates under this section and subsequent registration plates under this section shall be issued to that person without the repeated presentation of the required documentation. This subsection (b) shall not apply in the case of an application by a surviving spouse in which the deceased honorably discharged

veteran had been issued a license plate or license plates under this section.

(c)(1) The registration plates provided for in this section shall be designed in consultation with the commissioner of veterans' affairs.

(2) The design of registration plates that are issued pursuant to this section shall bear the name of the county of issue on the lower edge of the tag.

(3) For honorably discharged veterans and civilian veterans, the American flag shall be in the center of the tag.

(4) For honorably discharged veterans and civilian veterans of Vietnam, the center emblem shall be crossed American and Republic of Vietnam flags. A Southeast Asia campaign medal or appropriate civilian documentation shall have been awarded in order to obtain the Vietnam Veteran plate.

(5) For veterans and civilian veterans of World War II, the strip along the bottom of the license plate shall read "WW II Veteran", and the symbol on the left shall be the Honorable Service Lapel Pin, also known as the ruptured duck. Proof of honorable military or civilian service between December 7, 1941, and December 31, 1946, shall be required to obtain this plate.

(6) For veterans and civilian veterans of the Korean War, the strip along the bottom of the license plate shall read "Korean War Veteran", and the symbol on the left shall be crossed American and Republic of Korea flags. A Korean Service Medal shall have been awarded for an honorably discharged veteran, or appropriate civilian documentation, to obtain this plate.

(7) For veterans and civilian veterans of Operation Desert Storm, the strip along the bottom of the license plate shall read "Desert Storm Veteran", and the symbol on the left shall be crossed American and Kuwait flags. Award of the Southwest Asia Service Medal and proof of honorable service, or appropriate civilian documentation, shall be required for a veteran or civilian veteran to obtain this plate.

(8) For veterans and civilian veterans of the peacekeeping mission in Bosnia, the plate shall be designed by the commissioner of veterans' affairs in consultation with the commissioner of revenue. The commissioner of veterans' affairs shall also set proof of service requirements for honorably discharged veterans and civilian veterans to obtain this plate.

(9) For honorably discharged veterans of Operation Iraqi Freedom, the strip along the bottom of the license plate shall read "Operation Iraqi Freedom", and the symbol on the left shall be crossed American and Republic of Iraq flags, below which shall appear the word "VETERAN" in letters of an appropriate size. The commissioner of veterans' affairs shall also set proof of service requirements for veterans who served in Operation Iraqi Freedom to obtain the plate.

(10) For honorably discharged veterans of Operation Enduring Freedom and active members of the United States armed forces serving in Operation Enduring Freedom, the strip along the bottom of the license plate shall read "Operation Enduring Freedom", and the symbol on the left shall be crossed American and Republic of Afghanistan flags, below which shall appear the word "VETERAN" in letters of an appropriate size. The commissioner of veterans' affairs shall also set proof of service requirements for veterans who have served or who are still serving in Operation Enduring Freedom to obtain the plate.

(11) For honorably discharged veterans of Operation New Dawn and active members of the United States armed forces serving in Operation New

Dawn, the plate shall be designed by the commissioner of veterans' affairs in consultation with the commissioner of revenue. The commissioner of veterans' affairs shall also set proof of service requirements for veterans who have served or who are still serving in Operation New Dawn to obtain the plate.

(d) The commissioner of revenue is authorized to promulgate rules and regulations to effectuate the purposes of this section. All rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

**55-4-254. Tennessee Tech University.**

(a) An owner or lessee of a motor vehicle who is a resident of this state, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided for in § 55-4-203, shall be issued a Tennessee Tech University new specialty earmarked license plate for a motor vehicle authorized by § 55-4-210(c).

(b) The new specialty earmarked plates provided for in this section shall contain the official colors and Athletic Eagle Head logo of Tennessee Tech University and shall include language referencing the university's Centennial Celebration in an appropriate design. Such plates shall be designed in consultation with a representative from Tennessee Tech University's Creative Services division.

(c) The funds produced from the sale of such new specialty earmarked license plates shall be allocated to the Tennessee Tech University Foundation in accordance with § 55-4-215 to be used to support initiatives that directly relate to the goals established by the Complete College Act of 2010, codified in § 49-7-202(e)(1) and (2)

**55-4-278. Motorcycle registration plate for owner or lessee eligible for national guard plate, state guard plate, memorial plate, or military plate.**

(a)(1) Subject to the requirements of § 55-4-201, the commissioner is authorized, and shall issue, a registration plate to an owner or lessee of a motorcycle who is otherwise eligible for a national guard plate, enumerated in § 55-4-202(c)(3), a Tennessee state guard plate, enumerated in § 55-4-270, a memorial plate, enumerated in § 55-4-202(c)(4), or a military plate, enumerated in § 55-4-202(c)(5); provided, however, that the owner or lessee shall comply with the state motor vehicle laws relating to registration and licensing of motorcycles; and, except for an owner or lessee eligible for a memorial plate, enumerated in § 55-4-202(c)(4), and as provided in § 55-4-228(d)(1)(A) for an enlisted national guard member, pay the regular fee applicable to motorcycles, and the applicable fee specified in § 55-4-203, prior to the issuance of any such plate.

(2) Nothing in this section shall be construed as authorizing the issuance of an additional plate or plates free of charge to an eligible owner or lessee, whether for a motorcycle, authorized motor vehicle, or a combination of the two, above the total number of free plates authorized by § 55-4-235 for former prisoners of war, by § 55-4-233 pertaining to recipients of the Congressional Medal of Honor, by § 55-4-236 for recipients of the Distinguished Service Cross, the Distinguished Flying Cross, the Navy Cross, or

the Air Force Cross, by § 55-4-237 for disabled veterans, including those disabled veterans who choose to receive the Purple Heart plate, pursuant to § 55-4-237(d), or by § 55-4-228(d)(1)(A) for enlisted national guard members, as applicable.

(b) The motorcycle plates authorized by this section shall be substantially the same in design and configuration, allowing for variations due to size restrictions, as the regular motor vehicle registration plates authorized by § 55-4-202(c)(5)(E)(iii) for combat veterans, by § 55-4-202(c)(5)(E)(vii) for the Marine Corps League, by § 55-4-228 for national guard members, by § 55-4-270 for state guard members, by § 55-4-231 for Air Medal, Silver Star, and Bronze Star recipients, by § 55-4-235 for former prisoners of war, by § 55-4-233 pertaining to recipients of the Congressional Medal of Honor, by § 55-4-236 for recipients of the Distinguished Service Cross, the Distinguished Flying Cross, the Navy Cross, or the Air Force Cross, by § 55-4-237 for disabled veterans, by § 55-4-238 for Pearl Harbor survivors, by § 55-4-239 for holders of the Purple Heart, by § 55-4-242 for members of the United States reserve forces, by § 55-4-243 for enemy evadees, by § 55-4-244 for active and retired members of the United States military and the United States military reserves in good standing, by § 55-4-253 for honorably discharged veterans, or by § 55-4-318 for handicapped veterans, as applicable.

(c) The funds produced from the sale and renewal of the motorcycle plates shall be allocated in accordance with § 55-4-216 for the military plates enumerated in § 55-4-202(c)(5)(E), and in accordance with § 55-4-219 for the national guard plates enumerated in § 55-4-202(c)(3) and the memorial plates enumerated in § 55-4-202(c)(4), as applicable.

#### **55-4-282. Alpha Eta Rho International Aviation Fraternity.**

(a) An owner or lessee of a motor vehicle who is a resident of this state and who is certified as a member or alumni member of the Alpha Eta Rho International Aviation Fraternity, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided for in § 55-4-203, shall be issued an Alpha Eta Rho International Aviation Fraternity new specialty earmarked license plate for a motor vehicle authorized by § 55-4-210(c).

(b) The application for these license plates shall be accompanied by proof satisfactory to the commissioner, certifying the applicant to be a member or alumni member of the fraternity pursuant to subsection (a).

(c) The new specialty earmarked license plates provided for in this section shall contain an appropriate logo or other design representative of the Alpha Eta Rho International Aviation Fraternity. The plates shall be designed in consultation with the board of directors of the Alpha Eta Rho Foundation.

(d) The funds produced from the sale of Alpha Eta Rho International Aviation Fraternity new specialty earmarked license plates shall be allocated to the Alpha Eta Rho Foundation pursuant to § 55-4-215, for distribution to the Tennessee chapters of the fraternity. The funds shall be used to further the fraternity's educational goals for the future of collegiate aviation in Tennessee, including supporting educational and scholarship programs.

**55-4-283. Vanderbilt University Athletic Department.**

(a) An owner or lessee of a motor vehicle who is a resident of Tennessee, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided for in § 55-4-203, shall be issued a Vanderbilt University Athletic Department new specialty earmarked license plate for a motor vehicle authorized by § 55-4-210(c).

(b) The new specialty earmarked license plates provided for in this section shall be designed in consultation with the Vanderbilt University board of trust.

(c) The funds produced from the sale of Vanderbilt University Athletic Department new specialty earmarked license plates shall be allocated to the Vanderbilt University board of trust, in accordance with § 55-4-215, for distribution to the Vanderbilt University athletic department. The funds shall be used exclusively to fund scholarships for student athletes at Vanderbilt University.

**55-4-284. Northwest Tennessee Disaster Services.**

(a) Owners or lessees of motor vehicles who are residents of Tennessee, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided for in § 55-4-203, shall be issued a Northwest Tennessee Disaster Services new specialty earmarked license plate for a motor vehicle authorized by § 55-4-210(c).

(b) The new specialty earmarked license plates provided for in this section shall be designed with the assistance of Northwest Tennessee Disaster Services.

(c) The funds produced from the sale of Northwest Tennessee Disaster Services new specialty earmarked license plates pursuant to § 55-4-215 shall be allocated to Northwest Tennessee Disaster Services for the sole purpose of disaster relief efforts.

**55-4-285. Suicide Prevention.**

(a) Owners or lessees of motor vehicles who are residents of Tennessee, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided for in § 55-4-203, shall be issued a Suicide Prevention new specialty earmarked license plate for a motor vehicle authorized by § 55-4-210(c).

(b) The new specialty earmarked license plates provided for in this section shall contain an appropriate logo or other design representative of the Tennessee Suicide Prevention Network (TSPN) and the Jason Foundation. The plates shall be designed in consultation with the executive director of the Tennessee Suicide Prevention Network (TSPN) and the president of the Jason Foundation.

(c) The funds produced from the sale of Suicide Prevention new specialty earmarked license plates pursuant to § 55-4-215 shall be allocated to the Tennessee Suicide Prevention Network (TSPN) for the sole purpose of promoting the cause of suicide prevention in this state. The funds shall be used to further TSPN's awareness and education efforts in this state, including, but

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not limited to, local suicide prevention training sessions, support groups, debriefing sessions, and statewide awareness campaigns.

**55-4-289. Safe Schools.**

(a) An owner or lessee of a motor vehicle who is a resident of this state, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided for in § 55-4-203, shall be issued a Safe Schools new specialty earmarked license plate for a motor vehicle authorized by § 55-4-210(c).

(b) The new specialty earmarked license plates provided for in this section shall contain the logo "Safe Schools" and shall be designed in consultation with the department of education.

(c) There is created a special account within the general fund to be known as the "school safety account," referred to in this section as the "account". The funds produced from the sale of Safe Schools new specialty earmarked license plates shall be allocated to the department of education and deposited in the account. Amounts remaining in the account at the end of each fiscal year shall not revert to the general fund. Money in the account shall be invested by the state treasurer pursuant to title 9, chapter 4, part 6 for the sole benefit of the account. All earnings attributable to such investments shall be credited to the account.

(d) The owners or lessees of motor vehicles who obtain new specialty earmarked license plates pursuant to this section may designate that the proceeds from the fees shall be allocated to a particular named school. The department of education shall remit the proceeds to the local education agency operating the named school, and the local school board shall allocate the proceeds for the benefit of the named school, and shall make the funds available to the school. Any undesignated proceeds from the fees shall be distributed to the local education agency according to the average daily attendance of schools which serve the counties in which the proceeds were generated.

(e) The funds shall be used solely for implementing safety upgrades at schools, hiring school resource officers, improving school security, and providing resources for school safety plans and teams.

**55-4-297. Harpeth River Watershed Association.**

(a) An owner or lessee of a motor vehicle who is a resident of this state upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided in § 55-4-203, shall be issued a Harpeth River Watershed Association new specialty earmarked license plate for a motor vehicle authorized by § 55-4-210(c).

(b) The new specialty earmarked license plates shall be of an appropriate design representative of the Harpeth River Watershed Association. The plates shall be designed in consultation with the Harpeth River Watershed Association.

(c) The funds produced from the sale of the Harpeth River Watershed Association new specialty earmarked license plates shall be allocated to the Harpeth River Watershed Association, in accordance with § 55-4-215. The funds shall be used for restoring and protecting the ecological health of the

Harpeth River and clean water in Tennessee.

(d) Notwithstanding § 55-4-201(h)(1), the Harpeth River Watershed Association new specialty earmarked license plates authorized by this section shall have two (2) years from the effective date of this act or until July 1, 2015, whichever is later, to meet applicable initial issuance requirements of § 55-4-201(h)(1).

(e) Section 55-4-201(f) shall not apply to the new specialty earmarked license plate authorized by this section.

#### **55-4-301. Juvenile Diabetes Research Foundation.**

(a) An owner or lessee of a motor vehicle who is a resident of this state, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided for in § 55-4-203, shall be issued a Juvenile Diabetes Research Foundation new specialty earmarked license plate for a motor vehicle authorized by § 55-4-210(c).

(b) The new specialty earmarked license plates shall contain the logo or other appropriate design representative of the Juvenile Diabetes Research Foundation. The plates shall be designed in consultation with the executive officers of the Juvenile Diabetes Research Foundation.

(c) In accordance with § 55-4-215, the funds produced from the sale of the Juvenile Diabetes Research Foundation new specialty earmarked license plates shall be allocated to the Juvenile Diabetes Research Foundation, a leading global organization focused on type 1 diabetes research.

#### **55-4-303. Tennessee Theatre.**

(a) An owner or lessee of a motor vehicle who is a resident of this state upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided in § 55-4-203, shall be issued a Tennessee Theatre new specialty earmarked license plate for a motor vehicle authorized by § 55-4-210(c).

(b) The new specialty earmarked license plates shall be of an appropriate design representative of the Tennessee Theatre. The plates shall be designed in consultation with the Tennessee Theatre.

(c) The funds produced from the sale of the Tennessee Theatre new specialty earmarked license plates shall be allocated to the Tennessee Theatre, in accordance with § 55-4-215. Such funds shall be used exclusively to benefit and further the goals of the Tennessee Theatre.

#### **55-4-304. Adoption.**

(a) An owner or lessee of a motor vehicle who is a resident of Tennessee, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided for in § 55-4-203, shall be issued a new specialty earmarked license plate for a motor vehicle authorized by § 55-4-210(c), to recognize and encourage the compassionate practice of adoption.

(b) The new specialty earmarked license plates provided for in this section shall be designed to recognize the benevolent aspects of adoption. Such plates

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shall be designed in consultation with distinguished adoption entities.

(c) The funds produced from the sale of such new specialty earmarked license plates shall be allocated equally to the Adoption Foundation of Tennessee, Inc. and Harmony Adoptions of Tennessee, Inc., in accordance with § 55-4-215. Such funds shall be used exclusively to facilitate adoption in Tennessee.

(d) Section 55-4-201(f) shall not apply to the new specialty earmarked license plate authorized by this section.

#### **55-4-305. Sons of the American Revolution.**

(a) An owner or lessee of a motor vehicle who is a resident of this state, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided in § 55-4-203, shall be issued a Sons of the American Revolution new specialty earmarked license plate for a motor vehicle authorized by § 55-4-210(c).

(b) The new specialty earmarked license plates shall be of an appropriate design representative of the Gadsden flag, and shall include the language "Don't Tread on Me." Such plates shall be designed in consultation with the executive officers of the Tennessee Society of the Sons of the American Revolution.

(c) The funds produced from the sale of Sons of the American Revolution new specialty earmarked license plates shall be allocated to the Tennessee Society of the Sons of the American Revolution, in accordance with § 55-4-215. The funds shall be used to promote the activities of the Tennessee Society of the Sons of the American Revolution, to include youth programs and patriot grave identification, location, documentation and marking.

#### **55-4-306. Choose Life.**

(a) An owner or lessee of a motor vehicle who is a resident of this state, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided for in § 55-4-203, shall be issued a Choose Life new specialty earmarked license plate for a motor vehicle authorized by § 55-4-210(c).

(b) The new specialty earmarked license plates provided for in this section shall contain an appropriate logo and design. The plates shall be designed in consultation with a representative of New Life Resources.

(c) The funds produced from the sale of Choose Life new specialty earmarked license plates shall be allocated to New Life Resources in accordance with § 55-4-215. New Life Resources is a 501(c)(3) nonprofit organization incorporated in 1995 to provide resources for women and families facing difficult or unexpected pregnancies. The funds shall be used exclusively for counseling and financial assistance, including food, clothing, and medical assistance for pregnant women in Tennessee; coordinating statewide awareness campaigns and a toll-free helpline; and reimbursing social service providers who prepare adoptions throughout the state for services and programs targeting at-risk women and families.

**55-4-313. Niswonger Children's Hospital.**

(a) Owners or lessees of motor vehicles who are residents of this state, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided for in § 55-4-203, shall be issued a Niswonger Children's Hospital new specialty earmarked plate for a motor vehicle authorized by § 55-4-210(c).

(b) The new specialty earmarked plates provided for in this section shall contain a logo or other design representative of the mission of Niswonger Children's Hospital. The plates shall be designed in consultation with the administration and governing body of Niswonger Children's Hospital.

(c) Funds produced from the sale of Niswonger Children's Hospital new specialty earmarked plates shall be allocated to the Mountain States Health Foundation in accordance with § 55-4-215. The funds shall be used for the sole purpose of developing and expanding Niswonger Children's Hospital, the Tri-Cities region's only children's hospital.

(d) Section 55-4-201(f) shall not apply to the new specialty earmarked plate authorized by this section.

(e)(1) Notwithstanding any law to the contrary, any person issued a Children's Hospital at Johnson City Medical Center new specialty earmarked plate authorized and issued pursuant to the former provisions of this section prior to July 1, 2009, shall be entitled to retain the license plate for vehicular use upon compliance with all motor vehicle laws relating to registration and licensing of motor vehicles and payment of all required fees.

(2) Children's Hospital at Johnson City Medical Center new specialty earmarked plates shall be included in any calculations for issuance and continuation of issuance of Niswonger Children's Hospital new specialty earmarked plates authorized pursuant to this section.

(3) No Children's Hospital at Johnson City Medical Center new specialty earmarked plate shall be required to be replaced with any redesigned license plate issued pursuant to this section until such time as the next regular replacement of the previously issued plate is scheduled; provided, that any person previously issued a Children's Hospital at Johnson City Medical Center new specialty earmarked plate may request a redesigned Niswonger Children's Hospital new specialty earmarked plate, if issued, at the time of their next regular renewal.

(4) If Niswonger Children's Hospital at Johnson City Medical Center new specialty earmarked plates are subsequently deemed obsolete pursuant to any provision of § 55-4-201(h)(1), such determination shall also apply to all Children's Hospital at Johnson City Medical Center new specialty earmarked plates previously issued.

(f) Notwithstanding the time limitations of § 55-4-201(h)(1), the "Niswonger Children's Hospital" new specialty earmarked license plate for a motor vehicle authorized by this section shall have until July 1, 2014, to meet the applicable minimum issuance requirements of § 55-4-201(h)(1).

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**55-4-325 — 55-4-328. [Reserved.]**

**55-4-331 — 55-4-341. [Reserved.]**

**55-4-343 — 55-4-346. [Reserved.]**

**55-4-347. Historic Collierville.**

(a) An owner or lessee of a motor vehicle who is a resident of this state, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided in § 55-4-203, shall be issued an Historic Collierville new specialty earmarked license plate for a motor vehicle authorized by § 55-4-210(c).

(b) The new specialty earmarked license plates shall be of an appropriate design representative of historic Collierville, Shelby County, Tennessee, and shall include the language “Historic Collierville.” The plates shall be designed in consultation with Main Street Collierville.

(c) The funds produced from the sale of Historic Collierville new specialty earmarked license plates shall be allocated to Main Street Collierville, in accordance with § 55-4-215. The funds shall be used exclusively for Main Street Collierville’s community-wide effort to create and implement a shared vision for the future of Collierville, Tennessee.

(d) Notwithstanding § 55-4-201(h)(1), the Historic Collierville new specialty earmarked license plates authorized pursuant to this section shall have one (1) year from the effective date of this act or until July 1, 2014, whichever is later, to meet the applicable minimum issuance requirements of § 55-4-201(h)(1).

**55-4-348 — 55-4-357. [Reserved.]**

**55-4-358. Tennessee Tennis.**

(a) An owner or lessee of a motor vehicle who is a resident of this state, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided in § 55-4-203, shall be issued a Tennessee Tennis new specialty earmarked license plate for a motor vehicle authorized by § 55-4-210(c).

(b) The new specialty earmarked license plates authorized by this section shall be of an appropriate design or logo representative of the Tennessee Tennis Association, and shall include the language “Tennessee Tennis.” The plates shall be designed in consultation with the Tennessee Tennis Association.

(c) The funds produced from the sale of Tennessee Tennis new specialty earmarked license plates shall be allocated to the Tennessee Tennis Association in accordance with § 55-4-215. The funds shall be used to promote and develop the growth of tennis in Tennessee.

(d) Notwithstanding § 55-4-201(h)(1), the Tennessee Tennis new specialty earmarked license plate for a motor vehicle authorized by this section shall have one (1) year from the effective date of this act or until July 1, 2014, whichever is later, to meet the applicable minimum issuance requirements of § 55-4-201(h)(1).

**55-4-359. [Reserved.]**

**55-4-360. East Tennessee Children's Hospital.**

(a) Owners or lessees of motor vehicles who are residents of the state, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided for in § 55-4-203, shall be issued an East Tennessee Children's Hospital new specialty earmarked license plate for a motor vehicle authorized by § 55-4-210(c).

(b) The new specialty earmarked license plates provided for in this section shall bear an appropriate design and shall be designed in consultation with the chair of the board of the East Tennessee Children's Hospital. The design of such plates may be identical to the East Tennessee Children's Hospital plates previously authorized by Chapter 876 of the Public Acts of 2002.

(c) In accordance with § 55-4-215, the funds produced from the sale of such new specialty earmarked license plates shall be allocated to the East Tennessee Children's Hospital to be used in furtherance of such organization's activities in Tennessee.

(d) Section 55-4-201(f) shall not apply to the new specialty earmarked plates authorized by this section.

(e) Notwithstanding § 55-4-201(h)(1), the East Tennessee Children's Hospital new specialty earmarked license plates authorized pursuant to this section shall have one (1) year from the effective date of this act or until July 1, 2014, whichever is later, to meet the applicable minimum issuance requirements of § 55-4-201(h)(1).

**55-4-361. Almost Home Animal Rescue.**

(a) Owners or lessees of motor vehicles who are residents of this state, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided for in § 55-4-203, shall be issued an Almost Home Animal Rescue new specialty earmarked license plate for a motor vehicle authorized by § 55-4-210(c).

(b) The new specialty earmarked plates provided for in this section shall contain the official logo or other design representative of Almost Home Animal Rescue and shall be designed in consultation with such organization.

(c) The funds produced from the sale of such new specialty earmarked license plates shall be allocated to Almost Home Animal Rescue in accordance with § 55-4-215. Such funds shall be used exclusively to support the organization's mission of rescuing and relocating animals in this state who have been scheduled to be euthanized.

(d) Notwithstanding the time limitations of § 55-4-201(h)(1), the Almost Home Animal Rescue new specialty earmarked license plates authorized by this section shall have until July 1, 2014, to meet the applicable minimum issuance requirements of § 55-4-201(h)(1).

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**55-4-362 — 55-4-364. [Reserved.]**

**55-4-365. Autism Awareness.**

(a) Owners or lessees of motor vehicles who are residents of Tennessee, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided for in § 55-4-203, shall be issued an Autism Awareness new specialty earmarked license plate for a motor vehicle authorized by § 55-4-210(c).

(b) The new specialty earmarked license plates provided for in this section shall bear a logo or other appropriate emblem designed to raise public awareness about autism. Such plates shall be designed in consultation with ASMT, Inc.

(c) In accordance with § 55-4-215, funds produced from the sale of the Autism Awareness new specialty earmarked license plates shall be allocated to ASMT, Inc. for distribution to ASMT, Inc., Autism Society of East Tennessee, and the Autism Society of the MidSouth as nonprofit organizations dedicated to informational and referral services in their respective grand divisions and exempted from the payment of federal income taxes under 26 U.S.C. § 501(c)(3) of the Internal Revenue Code. Such funds shall be used exclusively to support, educate, advocate, and raise public awareness about autism in Tennessee.

(d) Notwithstanding § 55-4-201(h)(1), the Autism Awareness new specialty earmarked license plates authorized pursuant to this section shall have one (1) year from the effective date of this act or until July 1, 2014, whichever is later, to meet the applicable minimum issuance requirements of § 55-4-201(h)(1).

**55-4-366. [Reserved.]**

**55-4-368. I RECYCLE.**

(a) Notwithstanding § 55-4-201(f), owners or lessees of motor vehicles who are residents of the state, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided for in § 55-4-203, shall be issued an I RECYCLE new specialty earmarked license plate for a motor vehicle authorized by § 55-4-210(c).

(b) The new specialty earmarked license plates provided for in this section shall be designed in consultation with Project 2000, Inc., and contain the language “I RECYCLE”.

(c) In accordance with § 55-4-215, the funds produced from the sale of such I RECYCLE new specialty earmarked license plates shall be allocated to Project 2000, Inc., a nonprofit organization that provides assistance to communities to encourage recycling.

(d) Notwithstanding § 55-4-201(h)(1), the “I RECYCLE” new specialty earmarked license plates authorized pursuant to this section shall have one (1) year from the effective date of this act or until July 1, 2014, whichever is later, to meet the applicable minimum issuance requirements of § 55-4-201(h)(1).

**55-4-369 — 55-4-373. [Reserved.]**

**55-4-374. Tennessee Federation of Garden Clubs.**

(a) Owners or lessees of motor vehicles who are residents of this state, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided for in § 55-4-203, shall be issued a Tennessee Federation of Garden Clubs new specialty earmarked license plate for a motor vehicle authorized by § 55-4-210(c).

(b) The new specialty earmarked plates provided for in this section shall contain the official logo or other design representative of the Tennessee Federation of Garden Clubs and shall be designed in consultation with such organization.

(c) The funds produced from the sale of such new specialty earmarked license plates shall be allocated to the Tennessee Federation of Garden Clubs, Inc. in accordance with § 55-4-215. Such funds shall be used exclusively to support the organization's educational programs in gardening and conservation.

(d) Notwithstanding § 55-4-201(h)(1), the Tennessee Federation of Garden Clubs new specialty earmarked license plates authorized pursuant to this section shall have one (1) year from the effective date of this act or until July 1, 2014, whichever is later, to meet the applicable minimum issuance requirements of § 55-4-201(h)(1).

**55-4-375. [Reserved.]**

**55-5-131. Accurate vehicle identification number (VIN) reporting advisory committee. [Effective until April 1, 2014.]**

(a) There is created the accurate vehicle identification number (VIN) reporting advisory committee, to be composed of twelve (12) members as follows:

(1) One (1) member of the senate to be appointed by the speaker of the senate;

(2) One (1) member of the house of representatives to be appointed by the speaker of the house of representatives;

(3) The executive director of the Tennessee Association of Chiefs of Police or the director's designee;

(4) The executive director of the Tennessee Sheriffs' Association or the director's designee;

(5) The executive director of the district attorneys general conference or the director's designee;

(6) The commissioner of revenue or the commissioner's designee;

(7) The commissioner of safety or the commissioner's designee;

(8) The president of the Tennessee Scrap Recyclers Association or the president's designee;

(9) A representative from an automobile dismantler's company, to be appointed by the speaker of the house of representatives;

(10) A representative from the automobile auction industry, to be appointed by the speaker of the senate;

(11) The executive director of the Tennessee Automotive Association or the

director's designee; and

(12) The executive director of the Tennessee Independent Automobile Dealers Association or the director's designee.

(b) The accurate vehicle identification number (VIN) reporting advisory committee shall make recommendations regarding the creation of an automated, real-time system to assist private industries, law enforcement agencies, and the state in verifying the accuracy of VINs of motor vehicles that are purchased for parts, dismantling or scrap. The committee shall also study the cost and feasibility of making a system available for access and use to motor vehicle dismantlers, recyclers, scrap metal processors, state and local law enforcement agencies, the department of safety, and the department of revenue.

(c) The committee shall be convened by the member with the most years of continuous service in the general assembly, and at its first meeting shall elect a chair, vice chair, and other officers as the committee deems necessary.

(d) The committee shall only meet on days when the house of representatives and the senate are otherwise meeting in committee.

(e) The members of the committee shall serve without compensation and travel expenses.

(f) The committee shall report its findings and recommendations to the governor, speaker of the senate, speaker of the house of representatives, and comptroller of the treasury no later than April 1, 2014, at which time the committee shall cease to exist.

#### **55-7-203. Maximum weight per axle or group of axles allowed.**

(a) Except as otherwise provided by law, no freight motor vehicle shall be operated over, on, or upon the public highways of this state where the total weight on a single axle or any group of axles exceeds the weight limitations set forth in subdivisions (b)(1)-(7).

(b)(1)(A) No axle shall carry a load in excess of twenty thousand pounds (20,000 lbs.).

(B) Axle combinations and fifth wheel placement on the tractor shall ensure equal weight distribution on weight carrying axle combinations, and the axle combinations shall be equipped with brakes having power motivation.

(C) An axle load as set out herein is defined as the total load transmitted to the road by all wheels whose centers may be included between two (2) parallel transverse vertical planes, not more than forty inches (40") apart, extending across the full width of the vehicle.

(2) The total gross weight concentrated on the highway surface from any tandem axle group shall not exceed thirty-four thousand pounds (34,000 lbs.) for each tandem axle group. "Tandem axle group" means two (2) or more axles spaced more than forty inches (40") and not more than ninety-six inches (96") apart from center to center having at least one (1) common point of weight suspension.

(3) The total gross weight of a vehicle, freight motor vehicle, truck-tractor, trailer or semitrailer or combinations of these vehicles operated over, on or upon the public highways of this state shall not exceed eighty thousand pounds (80,000 lbs.); provided, that when operating over or on the interstate system of this state the total gross weight shall not exceed the lesser of

eighty thousand pounds (80,000 lbs.) or the weight produced by application of the following formula:

$$W=500\left(\frac{LN}{N-1}+12N+36\right)$$

Where W = overall gross weight on any group of two (2) or more consecutive axles to the nearest five hundred pounds (500 lbs.), L = distance in feet between the extreme of any group of two (2) or more consecutive axles, and N = number of axles in group under consideration, except that two (2) consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds (34,000 lbs.) each, where the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six feet (36') or more, except such vehicles, or combinations thereof operating under special permits now authorized by law; provided, that wherever a maximum permissive gross weight of eighty thousand pounds (80,000 lbs.) or of lengths prescribed in § 55-7-201 or a height of thirteen and one-half feet (13 ½') is authorized for any vehicle or combination of vehicles, it is the legislative intent that the prescribed weight, length, and height limits shall be strictly enforced, and it is unlawful for any state, county, or municipal officer to allow or permit any additional weight, length or height by way of tolerance or otherwise, except that the commissioner of transportation may issue special permits pursuant to § 55-7-205.

(4) "Freight motor vehicle," as used in this section, includes both the tractor or truck and the trailer, semitrailer or trailers, if any, and the weight of any combination shall not exceed the maximum fixed herein; provided, that no freight motor vehicle with motive power shall haul more than one (1) vehicle unless otherwise provided.

(5) No freight motor vehicle shall haul a trailer on any highway of this state when the trailer (including its load) weighs more than three thousand five hundred pounds (3,500 lbs.). The restrictions on hauling a trailer in excess weight of three thousand five hundred pounds (3,500 lbs.) by a freight motor vehicle, as described in the preceding sentence, shall not be applicable whenever a converter dolly or equivalent fixed connection having the same safety characteristics is appropriately installed or placed under the trailer to be hauled by this freight motor vehicle. For the purposes of this subdivision (b)(5), "trailer" means a vehicle without motive power designed or used for carrying freight or property wholly on its own structure; provided, that it is not unlawful for any motor vehicle subject to this part to have a semitrailer, which, for the purposes hereof, is defined as a vehicle for the carrying of property or freight and so designed that some part of the weight of the semitrailer or its load rests upon or is carried by the motor vehicle to which it is attached. The hauling of a trailer (to the extent herein permitted) or a semitrailer shall be subject to the further provisions hereof. This part is not intended to prohibit the movements of spools carrying wire or cable, when used for construction or repair purposes. The weight limitation respecting trailers shall not be applicable to implements designed to distribute fertilizer while such vehicles are being drawn by a freight motor vehicle between the plant and the farm.

(6) If the gross weight of a freight motor vehicle does not exceed the sum obtained by computing the total weight allowable for the number and type of its axles, the driver shall not be cited for violation of an axle weight

limitation while transporting crushed stone, fill dirt and rock, soil, bulk sand, coal, clay, shale, phosphate muck, asphalt, concrete, other building materials, solid waste, tankage or animal residues, livestock and agricultural products, or agricultural limestone over the state highway system other than the portion designated as the interstate system.

(7) For purposes of enforcement of this section, weight restrictions shall be deemed to have a margin of error of ten percent (10%) of the true gross or axle weight for all logging, sand, coal, clay, shale, phosphate, solid waste, recovered materials, farm trucks and machinery trucks when being operated over the state highway system other than the portion designated as the interstate system. For the purposes of this subdivision (b)(7):

(A) "Clay truck" means those trucks used for hauling clay from the place of extraction to the place where the clay is used or processed;

(B) "Coal truck" means those trucks used for hauling coal and coal products;

(C) "Farm truck" means those trucks utilized by farmers to load grain, fiber, produce, livestock, milk or other agricultural products produced on their farms and to transport the agricultural commodities to their respective markets. The trucks include farm to market transportation when the truck is operated by the farmer, the farmer's family or employee or a representative hired by the farmer to haul the commodity;

(D) "Logging truck" means those trucks used for hauling logs, pulpwood, bark, wood chips or wood dust from the woods to the mill or from the mill to a loading or storage place or market;

(E) "Machinery truck" means those trucks used for hauling machinery by the owner/operator within a one hundred (100) mile radius of the base location of the owner/operator's area of operation, subject to the limitation of one (1) truck per owner/operator;

(F) "Phosphate truck" means those trucks used for hauling phosphate, phosphate products, or other raw materials used in the manufacture of phosphorus;

(G) "Recovered materials truck" means those trucks used for hauling recovered materials, as defined in § 68-211-802, but only while those materials are being hauled from the point of generation to the facility where they will be processed for subsequent shipment to an end-user;

(H) "Sand truck" means those trucks used for hauling raw sand from the place of extraction to the place where the sand is used or processed; provided, that if the commissioner of transportation is formally notified by an appropriate federal officer that as a result of any provision of Acts 1989, ch. 349, adding sand trucks to this subdivision (b)(7) that Tennessee will lose federal funds, then such act shall be void and inoperative;

(I) "Shale truck" means those trucks used for hauling shale from the place of extraction to the place where the shale is used or processed; and

(J) "Solid waste truck" means those trucks used for hauling solid waste, as defined in § 68-211-802, but only while the solid waste is being collected and being hauled from the place or places of collection to a landfill or disposal facility.

(8) Notwithstanding the maximum weight provisions of this section, in order to promote the reduction of fuel use and emissions, the maximum gross vehicle weight limits and axle weight limits for any motor vehicle subject to subdivision (b)(3) and equipped with idle-reduction technology or other

emissions-reduction technology shall be increased by the weight of the idle-reduction technology or emissions-reduction technology; provided, that such weight is not more than five hundred fifty pounds (550 lbs.) or the maximum amount allowed by federal law, whichever is greater. At the request of an authorized representative of the department of safety, the motor vehicle operator shall provide proof by means of documentation or by a physical inspection that the vehicle is equipped with such idle-reduction technology or other emissions-reduction technology.

**55-7-205. Permits for moving vehicles of excess weight or size — Signs — Rules and regulations — Fees.**

(a)(1) The commissioner of transportation has the authority to grant special permits for the movements of freight motor vehicles carrying gross weights in excess of the gross weights set forth in § 55-7-203, or dimensions in excess of the dimensions set forth in §§ 55-7-201 and 55-7-202, and shall charge a fee in accordance with the fee schedules contained in subsection (h) for the issuance of a permit for each movement.

(2) The fee provisions shall not apply to farm tractors or farm machinery moving on any highway.

(3) It is not necessary to obtain a permit, nor is it unlawful to move any vehicle or machinery in excess of the maximum width and height prescribed in § 55-7-202, used for normal farm purposes only where the vehicle or machinery is hauled on a farm truck as defined in § 55-1-119, or the vehicle or machinery is being transported by a farm machinery equipment dealer or repair person in making a delivery of new or used equipment or machinery to the farm of the purchaser, or in making a pickup and delivery of the farm machinery or equipment from the farm to a shop of a farm equipment dealer or repair person for repairs and return to the farm, and the movement is performed during daylight hours within a radius of fifty (50) miles of the point of origin, and no part of such movement is upon any highway designated and known as a part of the national system of interstate and defense highways or any fully controlled access highway facility.

(4) It is not necessary to obtain a permit nor is it unlawful to move any trailer or semitrailer utilized for transporting rolled hay bales; provided, that the width of the trailer or semitrailer, including any part of the load, does not exceed ten feet (10') (that is five feet (5') on each side of the centerline of the trailer or semitrailer), and the movement is performed during daylight hours within a radius of fifty (50) miles of the point of origin and no part of the movement is upon any highway designated and known as a part of the national system of interstate and defense highways or any fully controlled access highway facility or other federal-aid highway designated by the commissioner.

(5) No fee authorized by this section shall be charged for the issuance or renewal of such special permits to any retail electric service owned by a municipality or electric cooperative corporation, or to any telephone company or to contractors when they are moving utility poles doing work for such utilities.

(6) Upon compliance with the appropriate rules and regulations, such electric services, telephone companies, and their contractors, when they are moving utility poles, may be issued special permits for stated periods not

exceeding one (1) year.

(7) All fees received shall be paid into the state treasury and placed in the highway fund for the administration of this section.

(8) The commissioner has the authority to reduce the maximum gross weight of freight motor vehicles operating over lateral highways and secondary roads where through weakness of structure in either the surface of or the bridges over the lateral highways or secondary roads, the maximum loads provided by law, in the opinion of the commissioner, injure or damage the roads or bridges. The appropriate county officials shall have the same authority as to county roads.

(b)(1) The commissioner has the authority to grant a special permit with a duration of one (1) year for the movement of a single motor vehicle, that does not exceed the length limitation set forth in § 55-7-115 and the weight limitations set forth in § 55-7-203(b)(3), that has a width greater than one hundred two inches (102") but not exceeding one hundred eight inches (108"), and that is used exclusively to transport seed cotton modules.

(2) This special permit will allow the vehicle to travel upon the interstate system of highways and other federal-aid highways designated by the commissioner.

(3) The cost of this special annual permit shall be one hundred dollars (\$100).

(4) Solely during the harvest season for cotton, the movement of the vehicle operating under a special annual permit shall be unrestricted with respect to day of the week, time or holiday observation. At other times, the movement of the vehicle shall be subject to the rules and regulations which the commissioner has prescribed pursuant to subsection (e).

(c) The commissioner shall, at each bridge and on each lateral highway or secondary road, post signs indicating the maximum gross weight permitted thereon, and it is unlawful to operate any freight motor vehicles thereon with a gross weight in excess of the posted weight limit, and any person violating the rules and regulations of the commissioner upon the secondary or lateral roads commits a Class A misdemeanor.

(d) The commissioner of safety shall, with the approval of the governor, provide means and prescribe rules and regulations governing the weighing of freight motor vehicles, which rules and regulations may make allowances for differentials in weight due to weather conditions.

(e) The commissioner of transportation shall prescribe by orders of general application, rules and regulations for the issuance and/or renewal of these special permits for stated periods not exceeding one (1) year, for the transportation of such oversize, overweight, or overlength articles or commodities as cannot be reasonably dismantled or conveniently transported otherwise, and for the operation of such superheavy or overweight vehicles, motor trucks, semitrailers and trailers, whose gross weight, including load, height, width, or length, may exceed the limits prescribed herein or which in other respects fail to comply with the requirements of this code, as may be reasonably necessary for the transportation of these oversize, overweight, or overlength articles or commodities as cannot be reasonably dismantled or conveniently transported otherwise.

(f) Permits shall be issued and may be renewed only upon the terms and conditions, in the interest of public safety and the preservation of the highways, as are prescribed in general rules and regulations promulgated by

the orders of the commissioner.

(g) Rules and regulations so prescribed by the commissioner may require, as a condition of the issuance of these permits, that an applicant shall agree to and give bond with surety (unless an applicant shall by sworn statement furnish satisfactory proof of the applicant's own solvency to the authority issuing the permit) to indemnify the state and/or counties thereof, against damages to roads, or bridges, resulting from the use thereof by the applicant. Each permit and bond, if the commissioner so authorizes, may cover more than one (1) vehicle operated by the same applicant. The operation of vehicles, motor trucks, tractors, semitrailers or trailers in accordance with the terms of any such permit shall not constitute a violation of this part; provided, that the operator thereof shall have a permit, or a copy thereof, authenticated as the commissioner may require, in the operator's possession. The operation of any vehicle, motor truck, semitrailer or trailer, in violation of the terms of the permit, constitutes a violation of law punishable under § 55-7-206.

(h) The commissioner shall charge fees for granting special permits for the movements described in subsection (a) in accordance with the following schedules:

(1) Excessive width:

(A) Not more than ten feet (10'), ten dollars (\$10.00);

(B) Over ten feet (10') but not more than twelve feet (12'), fifteen dollars (\$15.00);

(C) Over twelve feet (12') but not more than fourteen feet (14'), twenty-five dollars (\$25.00);

(D) Over fourteen feet (14') but not more than sixteen feet (16'), thirty dollars (\$30.00);

(E) Except as provided in subdivision (h)(1)(F), over sixteen feet (16'), thirty dollars (\$30.00) plus five dollars (\$5.00) for each additional foot or fraction thereof greater than seventeen feet (17'); and

(F)(i) For houseboats over seventeen feet (17'), two thousand five hundred dollars (\$2,500), plus one hundred dollars (\$100) for each additional inch or fraction thereof greater than eighteen feet (18').

(ii) All permits issued by the department pursuant to subdivision (h)(1)(F)(i) shall require three (3) escort vehicles that comply with the applicable rules and regulations and routing approval from the department. Permits shall only be issued under subdivision (h)(1)(F)(i) for movements on Tuesday, Wednesday or Thursday;

(2) Excessive height or length:

Fifteen dollars (\$15.00);

(3) Excessive weight:

Fifteen dollars (\$15.00) plus five cents (5¢) per ton-mile;

(4) Evaluation of bridges and similar structures:

(A) Movements weighing over two hundred thousand pounds (200,000 lbs.) but not more than three hundred thousand pounds (300,000 lbs.), one hundred dollars (\$100);

(B) Movements weighing over three hundred thousand pounds (300,000 lbs.) but not more than five hundred thousand pounds (500,000 lbs.), three hundred dollars (\$300);

(C) Movements weighing over five hundred thousand pounds (500,000 lbs.) but not more than one million pounds (1,000,000 lbs.), five hundred dollars (\$500); and

(D) Movements weighing over one million pounds (1,000,000 lbs.), actual cost;

(5) A permit shall be available from the department of transportation on an annual basis for overdimensional and/or overweight vehicles, except for those vehicles permitted as provided for in subdivision (h)(6), for five hundred dollars (\$500) per year for weights up to one hundred twenty thousand pounds (120,000 lbs.) and for one thousand dollars (\$1,000) per year for weights in excess of one hundred twenty thousand pounds (120,000 lbs.). Movements in excess of one hundred fifty thousand pounds (150,000 lbs.) shall be required to obtain a special permit at a cost of fifteen dollars (\$15.00) plus five cents (5¢) per ton-mile for all weight in excess of one hundred fifty thousand pounds (150,000 lbs.); and

(6) A permit shall be available from the department on an annual basis for individual owners of overdimensional boats used strictly for noncommercial pleasure purposes for double the amount of the regular fee described in subdivisions (h)(1) and (2).

(i) The authority issuing the permits has the right to revoke the permits at any time in the event that in the use of the permit the holder of a permit abuses the privilege given thereby, or otherwise makes wrongful use of the permit. The authorized county authorities (as well as the commissioner) may issue permits, but always consistently with rules and regulations, prescribed by the commissioner, for movements over any and all roads, except city streets, within the limits of the county for which they are acting.

(j) A violation of a material provision of a special permit shall render it void.

(k) Any statute, resolution or ordinance to the contrary notwithstanding, the authority of any county or city agency to issue permits is limited with respect to maximums for weight and dimensions to the maximums therefor approved by the commissioner.

(l)(1) Notwithstanding any other law or regulation to the contrary, a special permit issued for a motor vehicle exceeding the length limitations established in § 55-7-201(c) for truck-tractor and semitrailer combinations shall allow for movement at night; provided, that:

(A) The total length of the motor vehicle and load does not exceed eighty-five feet (85');;

(B) The movement is confined to the interstate highway system, state highways with full control of access, or the shortest reasonable route to and from any such highway; and

(C) The load is marked as follows:

(i) On each side of the projecting load, one (1) red side marker lamp, visible from the side, located so as to indicate maximum overhang;

(ii) On the rear of the projecting load, two (2) red lamps, visible from the rear, one (1) at each side; and two (2) red reflectors, visible from the rear, one (1) at each side, located so as to indicate maximum width.

(2) This subsection (l) shall only apply to a single truck-tractor and semitrailer combination.

**55-8-201. Pilot program on use of certain golf carts on certain highways. [Effective until July 1, 2015.]**

(a) In order to evaluate providing municipalities with the authority to allow the use of certain golf carts on highways within the jurisdiction of the

municipality, there is established a pilot program as described in this section.

(b)(1) This section shall only apply in municipalities having the following populations, according to the 2010 federal census or any subsequent federal census:

not less than:	nor more than:
719	730
955	965
1,955	1,965
4,050	4,060
29,130	29,140

(2) Until January 1, 2014, the governing body of any municipality to which this section applies may authorize and regulate the operation of a golf cart on any public roadway within such municipality that is not a part of the county highway system or the state system of highways or the interstate and national defense highway system upon the governing body of such municipality adopting an ordinance by a two-thirds ( $\frac{2}{3}$ ) vote specifying each roadway that is open for golf cart use.

(c) The ordinance shall require that a golf cart operated on a designated public roadway:

(1) Be issued a permit for the golf cart by the municipality;

(2) Display a sticker or permit that identifies that the golf cart is allowed to be operated on specific roadways within the municipality; and

(3) Be inspected by the chief law enforcement officer of the municipality, or his designee, to ensure that the golf cart complies with the requirements of this section. The inspection fee under this subdivision (c)(3) shall not exceed ten dollars (\$10.00).

(d) Following the adoption of such an ordinance, a person may operate a golf cart on a public roadway pursuant to subsection (b) if:

(1) The posted speed limit of the designated public roadway is thirty miles per hour (30 mph) or less;

(2) The operator of the golf cart does not cross a roadway having a posted speed limit of more than thirty miles per hour (30 mph);

(3) The golf cart is being operated between one-half ( $\frac{1}{2}$ ) hour after sunrise and one-half ( $\frac{1}{2}$ ) hour before sunset;

(4) The operator and any passengers in the front seat are restrained by a safety belt at all times the golf cart is in forward motion;

(5) The golf cart is equipped with the following:

(A) Headlights;

(B) A tail lamp, stop lights, reflectors or an emblem or placard for slow moving vehicles;

(C) A mirror; and

(D) Brakes;

(6) The headlights of the golf cart are displayed during operation;

(7) The driver possesses a valid driver license; and

(8) The driver possesses valid liability insurance for such golf cart.

(e) Any person operating a golf cart on a public roadway under this section shall be subject to this chapter.

(f) The department of transportation may prohibit the operation of a golf cart on a public roadway designated under subsection (b) that crosses a highway which is part of the state system of highways if it determines that

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such prohibition is necessary in the interest of public safety.

(g) This section shall not apply to a golf cart that is not used on a public roadway except to cross a roadway while following a golf cart path on a golf course.

(h) Each municipality participating in such pilot program shall submit a report to the department of safety and the transportation committee of the house of representatives and the transportation and safety committee of the senate no later than the fifth of each month after the governing body enacts the ordinance authorizing golf carts on certain roadways detailing the program in such municipality. In addition to such monthly report, each municipality participating in the pilot program shall submit a cumulative report to the transportation committee of the house of representatives and the transportation and safety committee of the senate no later than February 1 of each year, detailing the program in such municipality. Each monthly and cumulative report shall include:

- (1) The total number of golf carts approved under this section;
- (2) The amount of citations issued to owners or drivers of such golf cars;
- (3) The number and severity of any incidents or accidents involving such golf carts; and
- (4) Any unforeseen effects of the pilot project.

(i)(1) Notwithstanding any ordinance or any other law to the contrary, if any municipality fails to submit a total of three (3) monthly reports or a cumulative report as required by subsection (h), the department of safety shall revoke the municipality's authority under this section to allow golf cart use on public roadways designated in subsection (b). Revocation of authorization shall be made in writing and sent by certified mail, return receipt requested, to the chief law enforcement officer and the mayor of the municipality no less than twenty (20) days prior to the effective date of the revocation of authority.

(2) No municipality participating in the pilot program shall issue any permit, registration or sticker for the operation of any low speed vehicle or medium speed vehicle, as defined in § 55-8-101.

(j) This section shall terminate on July 1, 2015, unless reenacted or extended by the general assembly prior to such date.

#### **55-9-408. Headlights complying with prohibition against glaring and dazzling lights — Anti-glare devices — Mounted height of lamps.**

Headlights shall be deemed to comply with the provisions of § 55-9-406, prohibiting glaring and dazzling lights, if the headlights are of a type customarily employed by manufacturers of automobiles and in addition are equipped with some anti-glare device; provided, that the anti-glare device, or any combination thereof, when properly adjusted, shall prevent any of the bright portions of the headlight beams from rising above a horizontal plane passing through the lamp centers parallel to a level road upon which the loaded vehicle stands and in no case higher than forty-two inches (42"), seventy-five feet (75') ahead of the vehicle.

**55-9-409. Inspecting and testing lamps emitting glare — Order to remove illegal lamps — Arrest of drivers.**

(a) Any member of the highway patrol having reasonable ground to believe that any headlamp or auxiliary driving or fog lamp or any device upon a vehicle emits a glaring light as defined in §§ 55-9-406 and 55-9-408, or otherwise fails to comply with the requirements of this part, may require the driver of the vehicle to stop and submit the lamp to an inspection or test. The officer making the inspection shall require the driver of the vehicle to remove the illegal lamp within twenty-four (24) hours, and may arrest the driver and give the driver a notice to appear, and may further require the driver or the owner of the vehicle to produce in court satisfactory evidence of the removal of the illegal lamp.

(b) In the event any headlight or auxiliary driving or fog light, by reason of faulty adjustment or otherwise, emits a glaring light as defined in §§ 55-9-406 and 55-9-408 or otherwise fails to comply with this part, the officer making the inspection shall direct the driver to make the light or lights conform to the requirements of this part within forty-eight (48) hours. The officer may also arrest the driver and give the driver a notice to appear, and further require the driver or the owner of the vehicle to produce in court satisfactory evidence that the light or lights have been made to conform with the requirements of this part.

**55-9-411. [Repealed.]**

**55-9-412. [Repealed.]**

**55-10-203. When arrested person must be taken before a magistrate — Admission to bail.**

(a) Whenever any person is arrested for a violation of chapter 8 or parts 1-5 of this chapter, the arrested person shall be taken without unnecessary delay before a magistrate or judge within the county in which the offense charged is alleged to have been committed, who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made, in any of the following cases:

(1) When a person arrested demands an immediate appearance before a magistrate or judge;

(2) When the person is arrested upon a charge of criminally negligent homicide, voluntary manslaughter or murder;

(3) When the person is arrested upon a charge of driving while under the influence of intoxicating liquor or narcotic drugs;

(4) When the person is arrested upon a charge of failure to stop in the event of an accident causing death, personal injury or damage to property; and

(5) In any other event when the person arrested refuses to give written promise to appear in court as hereinafter provided.

(b) Any person arrested and charged with violating any provision of chapters 8 and 9 of this title or §§ 55-10-103 — 55-10-310 who is taken before a magistrate or judge as provided in subsection (a) shall be admitted to bail by posting a cash bond, but in no case shall the cash bond exceed the maximum fine and costs for the offense or offenses for which the defendant is charged.

**55-10-205. Reckless driving.**

(a) Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property commits reckless driving.

(b) A person commits an offense of reckless driving who drives a motorcycle with the front tire raised off the ground in willful and wanton disregard for the safety of persons or property on any public street, highway, alley, parking lot, or driveway, or on the premises of any shopping center, trailer park, apartment house complex, or any other premises that are generally frequented by the public at large; provided, that the offense of reckless driving for driving a motorcycle with the front tire raised off the ground shall not be applicable to persons riding in a parade, at a speed not to exceed thirty miles per hour (30 mph), if the person is eighteen (18) years of age or older.

(c)(1) Any motor vehicle operator who knowingly ignores a clearly visible and adequate flood warning sign or barricade and drives into a road area that is actually flooded commits reckless driving. In addition to the penalties imposed pursuant to subsection (d), the court may order the operator to pay restitution to defray the taxpayer cost of any rescue efforts related to such violation.

(2) It is an affirmative defense to prosecution under this section, which must be proven by a preponderance of the evidence, that the operator's driving through the flood warning sign or barricade was necessitated by a bona fide emergency.

(3) This subsection (c) shall not apply to an emergency vehicle. "Emergency vehicle" means a vehicle of a governmental department or public service corporation when responding to any emergency, or any vehicle of a police or fire department, or any ambulance.

(d)(1) A violation of this section is a Class B misdemeanor.

(2) In addition to the penalty authorized by subdivision (d)(1), the court shall assess a fine of fifty dollars (\$50.00) to be collected as provided in § 55-10-412(b) and distributed as provided in § 55-10-412(c).

**55-10-308. Enforcement within municipalities — Suspension of authorization.**

(a) Where chapter 8 of this title and §§ 55-10-101 — 55-10-310 apply to territory within the limits of a municipality, the primary responsibility for enforcing the sections shall be on the municipality which shall be further authorized to enforce the additional ordinances for the regulation of the operation of vehicles as it deems proper; provided, however, that any municipality having a population of ten thousand (10,000) or less, according to the 2000 federal census or any subsequent federal census, must exercise the authority conferred by this section in full compliance with the rules promulgated by the commissioner of safety to regulate enforcement of chapter 8 of this title and §§ 55-10-101 — 55-10-310, on the portions of any highway designated and known as part of the national system of interstate and defense highways lying within the territorial limits of the municipalities; provided, that this restriction shall not apply to drug interdiction officers employed by the municipality while the officers are actively serving with any judicial district drug force.

(b)(1) Upon determining that a municipality having a population of ten thousand (10,000) or less, according to the 2010 federal census or any

subsequent federal census:

(A) Is enforcing the rules of the road on interstates and defense highways without proper authority; or

(B) Has the proper authority to enforce the rules of the road on interstates and defense highways but is not complying with the rules promulgated by the department regarding such enforcement; the commissioner may refuse to issue or may suspend for up to three (3) years the authorization for such municipality to enforce the rules of the road on the interstate highways.

(2) Suspension of authorization shall be made in writing and sent by certified mail, return receipt requested, to the chief law enforcement officer and the mayor of the municipality no less than thirty (30) days prior to the effective date of the suspension of authority.

(3) The municipal law enforcement agency shall have twenty (20) days from receipt of the suspension notification to provide proof to the department that the municipal law enforcement agency was compliant with the rules promulgated by the department. Timely submission of proof to the department shall stay a suspension until the department has made a determination whether or not to rescind the suspension.

(4) If the proof submitted pursuant to subdivision (b)(3) is acceptable to the department, the commissioner shall inform in writing the chief law enforcement officer and mayor that the suspension is being rescinded.

(5) If the proof submitted pursuant to subdivision (b)(3) is not acceptable to the department, the commissioner shall inform the chief law enforcement officer and the mayor and the suspension of authorization shall be reinstated.

**55-10-401. Driving under the influence prohibited — Alcohol concentration in blood or breath.**

It is unlawful for any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the state, any shopping center, trailer park, apartment house complex or any other location which is generally frequented by the public at large, while:

(1) Under the influence of any intoxicant, marijuana, controlled substance, controlled substance analogue, drug, substance affecting the central nervous system or combination thereof that impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of himself which he would otherwise possess;

(2) The alcohol concentration in the person's blood or breath is eight-hundredths of one percent (0.08%) or more; or

(3) With a blood alcohol concentration of four-hundredths of one percent (0.04%) and the vehicle is a commercial motor vehicle as defined at § 55-50-102.

**55-10-402. Penalty for violations of § 55-10-401 — Alternative facilities for incarceration — Public service work — Inpatient alcohol and drug treatment.**

(a)(1)(A) Any person violating § 55-10-401, shall, upon conviction for the first offense, be sentenced to serve in the county jail or workhouse not less

than forty-eight (48) consecutive hours nor more than eleven (11) months and twenty-nine (29) days, and as a condition of probation, shall remove litter during the daylight hours from public roadways or publicly owned property for a period of twenty-four (24) hours in three (3) shifts of eight (8) consecutive hours each.

(B) Any person violating § 55-10-401, shall, upon conviction for first offense with a blood alcohol concentration of twenty-hundredths of one percent (0.20%), shall serve a minimum of seven (7) consecutive days rather than forty-eight (48) hours, and as a condition of probation, shall remove litter during the daylight hours from public roadways or publicly owned property for a period of twenty-four (24) hours in three (3) shifts of eight (8) consecutive hours each.

(2) Any person violating § 55-10-401, shall, upon conviction for second offense, be sentenced to serve in the county jail or workhouse not less than forty-five (45) consecutive days nor more than eleven (11) months and twenty-nine (29) days. Upon the conviction of a person on the second offense only, a judge may sentence the person to participate in a court approved alcohol or drug treatment program.

(3) Any person violating § 55-10-401, shall, upon conviction for third offense, be sentenced to serve in the county jail or workhouse not less than one hundred twenty (120) consecutive days nor more than eleven (11) months and twenty-nine (29) days.

(4) Any person violating § 55-10-401, upon conviction for fourth or subsequent offense shall be sentenced as a felon to serve not less than one hundred fifty (150) consecutive days nor more than the maximum punishment authorized for the appropriate range of a Class E felony.

(b)(1) If a person is convicted of a violation of § 55-10-401, and at the time of the offense, the person was accompanied by a child under eighteen (18) years of age, the person's sentence shall be enhanced by a mandatory minimum period of incarceration of thirty (30) days. The incarceration enhancement shall be served in addition to any period of incarceration received for the violation of § 55-10-401.

(2) Notwithstanding subsection (a), if, at the time of the offense, the person was accompanied by a child under eighteen (18) years of age, and the child suffers serious bodily injury as the proximate result of the violation of § 55-10-401, the person commits a Class D felony and shall be punished as provided in § 39-13-106, for vehicular assault.

(3) Notwithstanding subsection (a), if, at the time of the offense, the person was accompanied by a child under eighteen (18) years of age, and the child is killed as the proximate result of the violation of § 55-10-401, the person commits a Class B felony and shall be punished as provided in § 39-13-213(b)(2), for vehicular homicide involving intoxication.

(c) Subdivisions (b)(1)-(3) constitute an enhanced sentence, not a new offense.

(d) After service of at least the minimum sentence day for day, the judge has the discretion to require an individual convicted of a violation of § 55-10-401 to remove litter from the state highway system, public playgrounds, public parks or other appropriate locations for any prescribed period or to work in a recycling center or other appropriate location for any prescribed period of time in lieu of or in addition to any of the penalties otherwise provided in this section; provided, that any person sentenced to remove litter from the state

highway system, public playgrounds, public parks or other appropriate locations or to work in a recycling center shall be allowed to do so at a time other than the person's regular hours of employment.

(e) All persons sentenced under this part shall, in addition to service of at least the minimum sentence, be required to serve the difference between the time actually served and the maximum sentence on probation.

(f)(1) An offender sentenced to a period of incarceration for a violation of § 55-10-401, shall be required to commence service of the sentence within thirty (30) days of conviction or, if space is not immediately available in the appropriate municipal or county jail or workhouse within such time, as soon as such space is available. If, in the opinion of the sheriff or chief administrative officer of a local jail or workhouse, space will not be available to allow an offender convicted of a violation of § 55-10-401, to commence service of the sentence within ninety (90) days of conviction, the sheriff or administrative officer shall use alternative facilities for the incarceration of the offender. The appropriate county or municipal legislative body shall approve the alternative facilities to be used in the county or municipality.

(2) As used in this subsection (f), "alternative facilities" include, but are not limited to, vacant schools or office buildings or any other building or structure owned, controlled or used by the appropriate governmental entity that would be suitable for housing these offenders for short periods of time on an as-needed basis. A governmental entity may contract with another governmental entity or private corporation or person for the use of alternative facilities when needed and governmental entities may, by agreement, share use of alternative facilities.

(3) Nothing in this subsection (f) shall be construed to give an offender a right to serve a sentence for a violation of § 55-10-401, in an alternative facility or within a specified period of time. Failure of a sheriff or chief administrative officer of a jail to require an offender to serve the sentence within a certain period of time or in a certain facility or type of facility shall have no effect upon the validity of the sentence.

(g) Notwithstanding this section to the contrary, in counties with a metropolitan form of government and a population in excess of one hundred thousand (100,000), according to the 1990 federal census or any subsequent federal census, the judge exercising criminal jurisdiction may sentence a person convicted of violating § 55-10-401 for the first time to perform two hundred (200) hours of public service work in a supervised public service program in lieu of the minimum period of confinement required by subsection (a).

(h)(1) If the court orders participation in an inpatient alcohol and drug treatment program pursuant to subdivision (a)(2), the treatment program shall not exceed a period of twenty-eight (28) days. During this period of confinement in inpatient treatment, the person ordered to participate shall be confined to the inpatient treatment center and shall not, without further court order, be released for any reason until the completion of the treatment. In the event the person does not complete the confinement in the treatment program, that person shall be returned to the county jail or workhouse to serve the full period of the confinement imposed without any credit allowed for time spent in the program. Upon completion of the confinement in the program, the remainder of the confinement imposed shall be served in the county jail or workhouse.

(2)(A) The court is not empowered to order the expenditure of public funds to provide treatment. However, if a person ordered to participate in such a program is indigent, the court may allow the person, subject to availability of services, to enter any program that provides the treatment without cost to an individual. When making a finding as to the indigency of an accused, the court shall take into consideration:

- (i) The nature of the services of the program rendered;
- (ii) The usual and customary charges for rendering such program in the community;
- (iii) The income of the accused regardless of source;
- (iv) The poverty level guidelines compiled and published by the United States department of labor;
- (v) The ownership or equity of any real or personal property of the accused; and
- (vi) Any other circumstances presented to the court that are relevant to the issue of indigency.

(B) If a person ordered to participate is not indigent and participates in a program that provides treatment without cost to an individual, that person shall be obligated to pay for treatment in the same manner as provided in § 33-2-1202. If a person ordered to participate, participates in a court approved private treatment program, that person shall be responsible for the cost and fees involved with the program.

**55-10-403. Fines for violations of § 55-10-401 — Restitution.**

(a) A person convicted for a violation of § 55-10-401, shall be fined as follows:

(1) For a first offense, the person shall be fined not less than three hundred fifty dollars (\$350) nor more than one thousand five hundred dollars (\$1,500);

(2) For a second offense, the person shall be fined not less than six hundred dollars (\$600) nor more than three thousand five hundred dollars (\$3,500);

(3) For a third offense, the person shall be fined not less than one thousand one hundred dollars (\$1,100) nor more than ten thousand dollars (\$10,000);

(4) For a fourth or subsequent offense, the person shall be fined not less than three thousand dollars (\$3,000) nor more than fifteen thousand dollars (\$15,000);

(5) For any offense while accompanied by a child under eighteen (18) years of age, the person shall be fined one thousand dollars (\$1,000) in addition to the fine for the DUI offense.

(b) Unless the judge, using the applicable criteria set out in § 40-14-202(b), determines that a person convicted of violating § 55-10-401 is indigent, the minimum applicable fine shall be mandatory and shall not be subject to reduction or suspension. All fines are to be paid on the date sentence is imposed unless the court makes an affirmative finding that the defendant lacks a present ability to pay. The court shall then order a date certain before which payment shall be made. Should the defendant fail to comply with the order of the court, the clerk shall notify the court of the failure for further proceedings.

(c) The minimum and maximum fines for driving under the influence of an intoxicant shall continue to be collected and distributed as they were prior to

July 1, 2013.

(d) The payment of restitution to any person suffering physical injury or personal losses as the result of such offense, if such person is economically capable of making such restitution, shall be imposed as a condition of probation under § 55-10-410.

**55-10-404. Driving prohibitions; restricted licenses — revocation and suspension — commercial licenses and vehicles.**

(a)(1) The court shall prohibit any person convicted of a violation of § 55-10-401 from driving a vehicle in this state for a period of:

- (A) One (1) year, if the conviction is a first offense;
- (B) Two (2) years for a second offense;
- (C) Six (6) years for a third offense; and,
- (D) Eight (8) years for a fourth or subsequent offense.

(2) In the interest of public safety, a driver who has been prohibited from driving a vehicle in this state pursuant to this subsection (a) may apply for a restricted license subject to § 55-10-409.

(b) Nothing in this part shall be construed so as to in any way limit, change, alter, repeal, or amend § 55-50-303, § 55-50-501, or § 55-50-502, nor to limit the power or authority of the department of safety to revoke or suspend a driver license, permit, or privilege under chapter 50 of this title. Nothing in this section shall be construed to prohibit the issuance of a restricted license in accordance with § 55-10-409.

(c) A person holding a commercial driver license or operating a commercial motor vehicle at the time of the violation of § 55-10-401 for which they are convicted will also be subject to § 55-50-405.

**55-10-405. Prior convictions — Driving record as evidence.**

(a) For the sole purpose of enhancing the punishment for a violation a person who is convicted of a violation of § 55-10-401 shall not be considered a repeat or multiple offender and subject to the penalties prescribed in this part if ten (10) or more years have elapsed between the date of the present violation and the date of any immediately preceding violation of § 55-10-401 that resulted in a conviction for such offense. If, however, the date of a person's violation of § 55-10-401 is within ten (10) years of the date of the present violation, then the person shall be considered a multiple offender and is subject to the penalties imposed upon multiple offenders by this part. If a person is considered a multiple offender under this part, then every violation of § 55-10-401 that resulted in a conviction for such offense occurring within ten (10) years of the date of the immediately preceding violation shall be considered in determining the number of prior offenses. However, a violation occurring more than twenty (20) years from the date of the instant violation shall never be considered a prior offense for that purpose.

(b) For all purposes in this part the state shall use a conviction for the offense of driving under the influence of an intoxicant, vehicular homicide involving an intoxicant or vehicular assault involving an intoxicant that occurred in another state.

(c) For all purposes in this part a prior conviction for a violation of § 39-13-213(a)(2), § 39-13-106, § 39-13-218 or § 55-10-421, shall be treated the same as a prior conviction for a violation of § 55-10-401.

(d) A certified computer printout of the official driver record maintained by

the department of safety shall constitute prima facie evidence of any prior conviction. Following indictment by a grand jury, the defendant shall be given a copy of the department of safety printout at the time of arraignment. If the charge is by warrant, the defendant is entitled to a copy of the department printout at the defendant's first appearance in court or at least fourteen (14) days prior to a trial on the merits. If the defendant alleges error in the driving record in a written motion, the court may require that a certified copy of the judgment be provided for inspection by the court as to validity prior to the introduction of the department printout into evidence.

**55-10-406. Tests for alcohol or drug content of blood — Implied consent — Administration — Immunity from liability — Refusal to submit to test — Mandatory testing — Admissibility.**

(a) Any person who drives a motor vehicle in this state is deemed to have given consent to a test or tests for the purpose of determining the alcoholic content of that person's blood, a test or tests for the purpose of determining the drug content of the person's blood, or both tests. However, no such test or tests may be administered pursuant to this section unless conducted at the direction of a law enforcement officer having reasonable grounds to believe the person was driving while under the influence of alcohol, a drug, any other intoxicant or any combination of alcohol, drugs, or other intoxicants as prohibited by § 55-10-401, or was violating § 39-13-106, § 39-13-213(a)(2) or § 39-13-218.

(b)(1) The following persons who, acting at the written request of a law enforcement officer, withdraw blood from a person for the purpose of conducting either or both tests, shall not incur any civil or criminal liability as a result of the withdrawing of the blood, except for any damages that may result from the negligence of the person so withdrawing:

- (A) Any physician;
- (B) Registered nurse;
- (C) Licensed practical nurse;
- (D) Clinical laboratory technician;
- (E) Licensed paramedic;
- (F) Licensed emergency medical technician approved to establish intravenous catheters;
- (G) Technologist; or
- (H) A trained phlebotomist who is operating under a hospital protocol, has completed phlebotomy training through an educational entity providing such training, or has been properly trained by a current or former employer to draw blood.

(2) Neither shall the hospital nor other employer of the health care professionals listed in subdivision (b)(1) incur any civil or criminal liability as a result of the act of withdrawing blood from any person, except for negligence.

(c) Any law enforcement officer who requests that the driver of a motor vehicle submit to either or both tests authorized pursuant to this section, for the purpose of determining the alcohol or drug content, or both, of the driver's blood, shall, prior to conducting either test or tests, advise the driver that refusal to submit to the test or tests will result in the suspension by the court of the driver's operator's license; if the driver is driving on a license that is

cancelled, suspended or revoked because of a prior conviction as defined in § 55-10-405, the refusal to submit to the test or tests will, in addition, result in a fine and mandatory jail or workhouse sentence; and if the driver is convicted of a violation of § 55-10-401, that the refusal to submit to the test or tests, depending on the person's prior criminal history, may result in the requirement that the person be required to operate only a motor vehicle equipped with a functioning ignition interlock device. The court having jurisdiction of the offense for which the driver was placed under arrest shall not have the authority to suspend the license of a driver or require the driver to operate only a motor vehicle equipped with a functioning ignition interlock device pursuant to § 55-10-417 who refused to submit to either or both tests, if the driver was not advised of the consequences of the refusal.

(d)(1) Except as required by subdivision (d)(5), court order or search warrant, if such person is placed under arrest, requested by a law enforcement officer to submit to either or both tests, advised of the consequences for refusing to do so, and refuses to submit, the test or tests to which the person refused shall not be given, and the person shall be charged with violating subsection (a). The determination as to whether a driver violated subsection (a) shall be made at the driver's first appearance or preliminary hearing in the general sessions court, but no later than the case being bound over to the grand jury, unless the refusal is a misdemeanor offense in which case the determination shall be made by the court which determines whether the driver committed the offense; however, upon the motion of the state, the determination may be made at the same time and by the same court as the court disposing of the offense for which the driver was placed under arrest.

(2) Any person who is unconscious as a result of an accident or is unconscious at the time of arrest or apprehension or otherwise in a condition rendering that person incapable of refusal, shall be subjected to the test or tests as provided in this section. The results thereof shall not be used in evidence against that person in any court or before any regulatory body without the consent of the person so tested. Refusal of release of the evidence so obtained will result in the suspension of that person's driver license, thus the refusal of consent shall give the person the same rights of hearing and determinations as provided for conscious and capable persons in this section.

(3) Nothing in this section shall affect the admissibility in evidence, in criminal prosecutions for aggravated assault or homicide by the use of a motor vehicle only, of any chemical analysis of the alcoholic or drug content of the defendant's blood that has been obtained by any means lawful.

(4) Provided probable cause exists for criminal prosecution for the offense of driving under the influence of an intoxicant under § 55-10-401, nothing in this section shall affect the admissibility into evidence in a criminal prosecution of any chemical analysis of the alcohol or drug content of the defendant's blood that has been obtained while the defendant was hospitalized or otherwise receiving medical care in the ordinary course of medical treatment.

(5)(A) If a law enforcement officer has probable cause to believe that the driver of a motor vehicle involved in an accident resulting in the injury or death of another has committed a violation of § 39-13-213(a)(2), § 39-13-218, or § 55-10-401, the officer shall cause the driver to be tested for the purpose of determining the alcohol or drug content of the driver's blood. The test shall be performed in accordance with the procedure set forth in this section and shall be performed regardless of whether the driver does

or does not consent to the test; or

(B) If a law enforcement officer has probable cause to believe that the driver of a motor vehicle has committed a violation of § 39-13-213(a)(2), § 39-13-218 or § 55-10-401, and has a prior conviction of § 39-13-213(a)(2), § 39-13-218 or § 55-10-401, the officer shall cause the driver to be tested for the purpose of determining the alcohol or drug content of the driver's blood. The test shall be performed in accordance with the procedure set forth in this section and shall be performed regardless of whether the driver does or does not consent to the test.

(C) If a law enforcement officer has probable cause to believe that the driver of a motor vehicle has committed a violation of § 39-13-213(a)(2), § 39-13-218 or § 55-10-401, and a passenger in the motor vehicle is a child under sixteen (16) years of age, the officer shall cause the driver to be tested for the purpose of determining the alcohol or drug content of the driver's blood. The test shall be performed in accordance with the procedure set forth in this section and shall be performed regardless of whether the driver does or does not consent to the test.

(D) The results of a test performed in accordance with subdivision (d)(5)(A), (B) and (C) may be offered as evidence by either the state or the driver of the vehicle in any court or administrative hearing or official proceeding relating to the accident or offense subject to the Tennessee Rules of Evidence.

(E) The results of any test authorized by this section shall be reported in writing by the person making the test. The report shall have noted on it the time at which the sample analyzed was obtained from the person and made available to the person, upon request.

(6)(A) Upon the trial of any person charged with a violation of § 55-10-401 the results of any test or tests conducted on the person so charged shall be admissible in evidence in a criminal proceeding.

(B) Failure of a law enforcement officer to request the administering of a test or tests shall likewise be admissible in evidence in a criminal proceeding.

#### **55-10-407. Penalty for violations of § 55-10-406.**

(a) If the court finds that the driver violated § 55-10-406, except as otherwise provided in this section, the driver shall not be considered as having committed a criminal offense; provided, however, that the court shall revoke the license of the driver for a period of:

(1) One (1) year, if the person does not have a prior conviction as defined in subsection (f);

(2) Two (2) years, if the person does have a prior conviction as defined in subsection (f);

(3) Two (2) years, if the court finds that the driver involved in an accident, in which one (1) or more persons suffered serious bodily injury, violated § 55-10-406 by refusing to submit to such a test or tests; and

(4) Five (5) years, if the court finds that the driver involved in an accident in which one (1) or more persons are killed, violated § 55-10-406 by refusing to submit to such a test or tests.

(b) If the court or jury finds that the driver violated § 55-10-406 while driving on a license that was revoked, suspended or cancelled due to a prior

conviction as defined in § 55-10-405 the driver commits a Class A misdemeanor and shall be fined not more than one thousand dollars (\$1,000), and shall be sentenced to a minimum mandatory jail or workhouse sentence of five (5) days, which shall be served consecutively, day for day, and which sentence cannot be suspended.

(c) If a person's driver license is suspended for a violation of § 55-10-406 prior to the time the offense for which the driver was arrested is disposed of, the court disposing of such offense may order the department of safety to reinstate the license if:

(1) The person's driver license is currently suspended for an implied consent violation and the offense for which the driver was arrested resulted from the same incident; and

(2) The offense for which the person was arrested is dismissed by the court upon a finding that the law enforcement officer lacked sufficient cause to make the initial stop of the driver's vehicle.

(d) The period of license suspension for a violation of § 55-10-406 shall run consecutive to the period of license suspension imposed following a conviction for § 55-10-401 if:

(1) The general sessions court or trial court judge determines that the driver violated § 55-10-406; and

(2) The judge determining the violation of § 55-10-406 finds that the driver has a conviction or juvenile delinquency adjudication for a violation that occurred within five (5) years of the violation of § 55-10-406 for:

(A) Implied consent under § 55-10-406;

(B) Underage driving while impaired under § 55-10-415;

(C) The open container law under § 55-10-416; or

(D) Reckless driving under § 55-10-205, if the charged offense was § 55-10-401.

(e) Any person who violates § 55-10-406 by refusing to submit to either test or both tests, pursuant to § 55-10-406(d)(1), shall be charged by a separate warrant or citation that does not include any charge of violating § 55-10-401 that may arise from the same occurrence.

(f)(1) For the purpose of determining license suspension period under subsection (a), a person who is convicted of a violation of § 55-10-401 shall not be considered a repeat or multiple offender and subject to the penalties prescribed in subsection (a) if ten (10) or more years have elapsed between the date of the present violation and the date of any immediately preceding violation of § 55-10-401 that resulted in a conviction for such offense. If, however, the date of a person's violation of § 55-10-401 is within ten (10) years of the date of the present violation, then the person shall be considered a multiple offender and is subject to the penalties imposed upon multiple offenders by this part. If a person is considered a multiple offender under this part, then every violation of § 55-10-401 that resulted in a conviction for such offense occurring within ten (10) years of the date of the immediately preceding violation shall be considered in determining the number of prior offenses. However, a violation occurring more than twenty (20) years from the date of the instant violation shall never be considered a prior offense for that purpose.

(2) For the purpose of determining license suspension period under subsection (a), the state shall use a conviction for the offense of driving under the influence of an intoxicant, vehicular homicide involving an intoxicant or

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vehicular assault involving an intoxicant that occurred in another state.

(3) For the purpose of determining license suspension period under subsection (a), a prior conviction for a violation of § 39-13-213(a)(2), § 39-13-106, § 39-13-218 or § 55-10-421, shall be treated the same as a prior conviction for a violation of § 55-10-401.

**55-10-408. Tests for alcohol or drug content of blood — Procurement and processing of samples — Results — Additional testing.**

(a) The procurement of a sample of a person's blood for the purpose of conducting a test to determine the alcohol content, drug content, or both, of the blood shall be considered valid if the sample was collected by a person qualified to do so, as listed in § 55-10-406(b)(1), or a person acting at the direction of a medical examiner or other physician holding an unlimited license to practice medicine in Tennessee under procedures established by the department of health.

(b) Upon receipt of a specimen forwarded to the director's office for analysis, and the "toxicology request for examination" form, which shall indicate whether or not a breath alcohol test has been administered and the results of that test, the director of the Tennessee bureau of investigation shall have the specimen examined for alcohol concentration, the presence of narcotics or other drugs, or for both alcohol and drugs, if requested by the arresting officer, county medical examiner, or any district attorney general. The office of the director of the Tennessee bureau of investigation shall execute a certificate that indicates the name of the accused, the date, time and by whom the specimen was received and examined, and a statement of the alcohol concentration or presence of drugs in the specimen.

(c) When a specimen taken in accordance with this section is forwarded for testing to the office of the director of the Tennessee bureau of investigation, a report of the results of this test shall be made and filed in that office, and a copy mailed to the district attorney general for the district where the case arose.

(d) The certificate provided for in this section shall, when duly attested by the director of the Tennessee bureau of investigation or the director's duly appointed representative, be admissible in any court, in any criminal proceeding, as evidence of the facts therein stated, and of the results of the test, if the person taking or causing to be taken the specimen and the person performing the test of the specimen shall be available, if subpoenaed as witnesses, upon demand by either party to the cause, or, when unable to appear as witnesses, shall submit a deposition upon demand by either party to the cause.

(e) The person tested shall be entitled to have an additional sample of blood or urine procured and the resulting test performed by any medical laboratory of that person's own choosing and at that person's own expense; provided, that the medical laboratory is licensed pursuant to title 68, chapter 29.

**55-10-409. Restricted driver license — Ignition interlock device — Geographic restrictions.**

(a) Notwithstanding any other provision of this part to the contrary, a person whose license has been suspended by the court pursuant to § 55-10-404 is not eligible for, and the court shall not have the authority to grant or order, the issuance of a restricted driver license if, based on the record of the department, the person:

(1) Has a prior conviction for a violation of § 39-13-106, § 39-13-213(a)(2), or § 39-13-218, in this state or a similar offense in another state; or

(2) Seriously injured or killed another person in the course of the conduct that resulted in the driver's conviction under § 55-10-401 or a similar offense in another state. A driver who has committed such an offense shall not be eligible for and the court shall not have the authority to grant the issuance of a restricted motor vehicle operator's license until such time as the period of suspension mandated by § 55-10-404 has expired, notwithstanding the fact that it may be the driver's first conviction.

(b)(1)(A) Except as provided in subsection (a), if a person's motor vehicle operator's license has been revoked pursuant to § 55-10-404 or § 55-10-406, the person may apply to the trial judge or a judge of any court in the person's county of residence having jurisdiction to try charges for driving under the influence for a restricted driver license.

(i) If the person's present conviction for driving under the influence of an intoxicant is an offense for which subdivision (b)(2)(B) requires the court to order the person to operate only a motor vehicle that is equipped with a functioning ignition interlock device, the court may order the issuance of a restricted motor vehicle operator's license subject to such limitations. The court shall have discretion to order additional limitations, including but not limited to geographic restrictions as provided in subsection (c), on the restricted motor vehicle license.

(ii) If the person's violation of § 55-10-406 or present conviction for driving under the influence of an intoxicant is not an offense for which subdivision (b)(2)(B) requires the court to order the person to operate only a motor vehicle that is equipped with a functioning ignition interlock device, the court may order the issuance of a restricted motor vehicle operator's license. The court shall have discretion to order the person to operate only a motor vehicle that is equipped with a functioning ignition interlock device or place additional limitations on the person's restricted license; provided, however, that a restricted license issued pursuant to this subdivision (b)(1)(A)(ii) without an ignition interlock requirement shall be subject to geographic restrictions as provided in subsection (c).

(B)(i) A Tennessee resident, whose operator's license has been revoked because of a conviction in another jurisdiction for operating a motor vehicle while under the influence of an intoxicant, may apply for a restricted license to a judge of any court in the person's county of residence having jurisdiction to try charges for driving under the influence. The court may order the issuance of a restricted motor vehicle operator's license. The court shall have discretion to order the person to operate only a motor vehicle that is equipped with a functioning ignition interlock device or place additional limitations on the person's restricted license; provided, however, that a restricted license issued pursuant to this subdivision (b)(1)(B)(i) without an ignition interlock requirement shall be subject to geographic restrictions as provided in subsection (c). If the person has a prior conviction within the past ten (10) years for a violation of § 55-10-401 or § 55-10-421, in this state or a similar offense in any other jurisdiction, the court shall be required to order the person to operate only a motor vehicle that is equipped with a functioning

ignition interlock device.

(ii) If a copy of the judgment of conviction certified by the court that tried the case in the other jurisdiction accompanies the restricted license application, the court may issue such order allowing the person so convicted to operate a motor vehicle including such restrictions ordered by the court that tried the case in the other jurisdiction provided such restrictions do not conflict with Tennessee statutes or regulations.

(C) A person ordered to operate only a motor vehicle that is equipped with a functioning ignition interlock device pursuant to this subsection (b) may apply for assistance to meet the requirement pursuant to § 55-10-419, except as provided in subdivision (b)(2)(C).

(2)(A) Upon application by a person who is not prohibited from having a restricted license under subsection (a), the judge of the court may order the issuance of a restricted license in accordance with § 55-50-502(c) allowing the person to operate a motor vehicle for the limited purposes set forth in subdivision (c)(1).

(B) If the judge approves the restricted license application of a person who is not prohibited from having a restricted license under subsection (a), the judge shall also order the person to install and keep a functioning ignition interlock device as a condition of probation if, at the time of the offense:

(i) The person was convicted of a violation of § 55-10-401 and had a blood or breath alcohol concentration of eight hundredths of one percent (0.08%) or higher or a combination of alcohol in any amount and marijuana, a controlled substance, controlled substance analogue, drug, or any substance affecting the central nervous system;

(ii) The person was convicted of § 55-10-401 and was accompanied by a person under eighteen (18) years of age;

(iii) The person was involved in a traffic accident for which notice to a law enforcement officer is required under § 55-10-107, and the accident is the proximate result of the person's intoxication; or

(iv) The person violated the implied consent law under § 55-10-406, and has a conviction or juvenile delinquency adjudication for a violation that occurred within five (5) years of the instant implied consent violation, for:

(a) Implied consent under § 55-10-406;

(b) Underage driving while impaired under § 55-10-415;

(c) The open container law under § 55-10-416; or

(d) Reckless driving under § 55-10-205, if the charged offense was § 55-10-401.

(C) A person convicted of § 55-10-401, who is eligible for a restricted license under subsection (a) and who is not required to have an interlock device pursuant to subdivision (b)(2) or other section, may request the court order the installation and use of an ignition interlock in lieu of geographic restrictions or additional limitations on the restricted license. The person shall pay all costs associated with the device and is not eligible for ignition interlock fund assistance under § 55-10-419.

(D) A court may also order a person whose license has been suspended pursuant to § 55-10-407 to operate only a motor vehicle that is equipped with a functioning ignition interlock with or without geographic restrictions which shall remain on the vehicle during the entire period of the

restricted license. A person ordered to operate only a motor vehicle that is equipped with a functioning ignition interlock device pursuant to this subdivision (b)(2)(D) may apply for assistance to meet the requirement pursuant to § 55-10-419.

(c)(1) If a court issues an order allowing a person to operate a motor vehicle with geographic restrictions, the court shall specify the necessary time and places of permissible operation of a motor vehicle, for the limited purposes of going to and from:

(A) And working at the person's regular place of employment;

(B) The office of the person's probation officer or other similar location for the sole purpose of attending a regularly scheduled meeting or other function with the probation officer by a route to be designated by the probation officer;

(C) A court-ordered alcohol safety program;

(D) A college or university in the case of a student enrolled full time in the college or university;

(E) A scheduled interlock monitoring appointment;

(F) A court ordered outpatient alcohol and drug treatment program; and

(G) The person's regular place of worship for regularly scheduled religious services conducted by a bona fide religious institution as defined in § 48-101-502(c).

(2) A court order issued under subsection (b) may be presented within ten (10) days after the date of issuance to the department, accompanied by a fee of sixty-five dollars (\$65.00) and proof to the satisfaction of the department that a functioning ignition interlock device has been installed and will be maintained on one (1) or more vehicles to be operated by the person for the duration of the restricted license, if such installation and maintenance is required by subdivision (b)(2)(B) or the court's order. If the person has first successfully completed a driver license examination, the department shall forthwith issue a restricted license specifying that such restricted license authorizes the person, except as provided in § 55-10-417(m)(1), to operate only noncommercial vehicles equipped with a functioning ignition interlock device, if required, and embodying additional limitations imposed by the court upon the person.

(3) If the violation resulting in the person's conviction for driving under the influence or the person's violation of § 55-10-406 occurred prior to July 1, 2013, the law in effect when the violation occurred shall govern the person's eligibility for a restricted motor vehicle operator license unless the person petitions the court to consider the person's eligibility under the law in effect when the petition is filed.

(d)(1) Unless otherwise prohibited by subsection (a), the trial judge or a judge of any court in the person's county of residence having jurisdiction to try charges for driving under the influence may order the issuance of a restricted motor vehicle operator's license in accordance with § 55-50-502 to any person whose motor vehicle operator's license has been revoked pursuant to § 55-10-404 and who has a prior conviction within the past ten (10) years for a violation of § 55-10-401 or § 55-10-421, in this state or a similar offense in any other jurisdiction.

(2)(A) If the court orders the issuance of a restricted motor vehicle operator's license pursuant to this subsection (d), the court shall also order

the person, except as provided in § 55-10-417(m)(1), to operate only a motor vehicle that is equipped with a functioning ignition interlock device. The restriction shall be for the entire period of the restricted license and for a period of six (6) months after the license revocation period has expired if required by § 55-10-417(l).

(B) Sections 55-10-417, 55-10-418 and 55-10-419 shall apply when a person is ordered to operate only a motor vehicle that is equipped with a functioning ignition interlock device pursuant to this subsection (d).

**55-10-410. Probation conditions — Access to inmates by alcohol and drug treatment organizations.**

(a) In addition to incarceration, fines and license ramifications the sentencing judge has the discretion to impose any conditions of probation which are reasonably related to the offense, but shall impose the following conditions:

(1)(A)(i) Participation in an alcohol and drug safety DUI school, and/or drug offender school program, if available; and

(ii) A drug and alcohol assessment or treatment; or

(iii) If the court deems it appropriate and the service is available, both a drug and alcohol assessment and treatment, with the cost of such service being paid as provided in subdivision (a)(4); or

(B) In lieu of or in addition to subdivision (a)(1)(A), the judge may order the offender to attend a victims impact panel program if such a program is offered by the county where the offense occurs and, if the court finds the offender has the ability to pay, to pay a fee of not less than twenty-five (\$25.00) nor more than fifty dollars (\$50.00) as determined by the governing authority of the program and approved by the sentencing judge, to the program to offset the cost of participation by the offender; or

(2) Upon the second or subsequent conviction for violating § 55-10-401, involving being under the influence of a controlled substance or controlled substance analogue, § 39-17-418, involving the possession of a controlled substance, or § 39-17-454, involving the possession of a controlled substance analogue, participation in a program of rehabilitation at an alcohol or drug treatment facility, if available;

(3) Restitution as provided in § 55-10-403(d);

(4) Notwithstanding any other law to the contrary, if a person convicted of a violation of § 55-10-401 has a prior conviction for a violation of § 55-10-401 within the past five (5) years, the court shall order such person to undergo a drug and alcohol assessment and receive treatment as appropriate. Unless the court makes a specific determination that the person is indigent, the expense of such assessment and treatment shall be the responsibility of the person receiving it. Notwithstanding subdivision § 55-10-402(h)(2), if the court finds that the person is indigent, the expense or some portion of the expense may be paid from the alcohol and drug addiction treatment fund established in § 40-33-211(c)(2) pursuant to a plan and procedures developed by the department of mental health and substance abuse services.

(b) The sheriff of each county shall develop a written policy that permits alcohol and drug treatment organizations to have reasonable access to persons confined in the county jail or workhouse convicted of or charged with a violation of this part.

**55-10-411. Presumption of impairment — Notice of penalties for additional offenses — Allegation of prior convictions — Mandatory service of minimum sentence — No defense that person is lawful user of substance — Strip searches — Jurisdiction of general sessions court — Part definitions.**

(a) For the purpose of proving a violation of § 55-10-401(a)(1), evidence that there was, at the time alleged, eight-hundredths of one percent (0.08%) or more by weight of alcohol in the defendant's blood shall create a presumption that the defendant's ability to drive was sufficiently impaired thereby to constitute a violation of § 55-10-401(1).

(b)(1) Any person convicted of an initial or subsequent offense shall be advised, in writing, of the penalty for second and subsequent convictions, and, in addition, when pronouncing sentence the judge shall advise the defendant of the penalties for additional offenses. Written notice by the judge shall inform the defendant that a conviction for the offense of driving under the influence of an intoxicant committed in another state shall be used to enhance the punishment for a violation of § 55-10-401 committed in this state.

(2) In the prosecution of second or subsequent offenders, the indictment or charging instrument must allege the prior conviction or convictions for violating any of § 55-10-401, § 39-13-213(a)(2), § 39-13-106, § 39-13-218 or § 55-10-421, setting forth the time and place of each prior conviction or convictions. When the state uses a conviction for the offense of driving under the influence of an intoxicant, aggravated vehicular homicide, vehicular homicide, vehicular assault or adult driving while impaired committed in another state for the purpose of enhancing the punishment for a violation of § 55-10-401, the indictment or charging instrument must allege the time, place and state of the prior conviction.

(c) No person charged with violating § 55-10-401 shall be eligible for suspension of prosecution and dismissal of charges pursuant to §§ 40-15-102 — 40-15-105 and 40-32-101(a)(3)-(c)(3) or for any other diversion program nor shall any person convicted under such sections be eligible for suspension of sentence or probation pursuant to § 40-21-101 [repealed] or any other provision of law authorizing suspension of sentence or probation until such time as the person has fully served day for day at least the minimum sentence provided by law.

(d) Nothing in chapter 591 of the Public Acts of 1989, the Sentencing Reform Act of 1989, shall be construed as altering, amending or decreasing the penalties established in this section for the offense of driving under the influence of an intoxicant.

(e) The fact that any person charged with violating § 55-10-401 is or has been entitled to use one (1) or more intoxicants, alcohol, marijuana, controlled substances, controlled substance analogues, drugs, or other substances that cause impairment shall not constitute a defense against any charge of violating this part.

(f) No person arrested for a violation of § 55-10-401 shall be subjected to a strip search or body cavity search, unless the officer has probable cause to believe the arrested person is concealing a weapon or contraband in a body cavity. Contraband includes, but is not limited to, illegal drugs.

(g) No judge of the general sessions court has jurisdiction to punish any

person violating § 55-10-401 under the small offense law.

(h) The following definitions shall apply to this part:

(1) All definitions at § 55-8-101;

(2) "Functioning ignition interlock device" means a device that connects a motor vehicle ignition system to a breath-alcohol analyzer and prevents a motor vehicle ignition from starting if a driver's blood alcohol level exceeds the calibrated setting on the device and which devices, on all new installations after July 1, 2013, must employ technology capable of taking a photo identifying the person providing the breath sample, recording the date, the time and the test result along with the photo of the person providing the test and storing such information on the device for transfer to remote storage and reporting; provided, however, that the department of safety shall permit the continued installation by an ignition interlock provider of an ignition interlock device that is not capable taking photos or recording and storing the information required by this subdivision for up to six (6) months from May 13, 2013;

(3) "Ignition interlock provider" means an entity that has been approved and certified by the department of safety to provide the installation, monitoring and removal of functioning ignition interlock devices in this state; and

(4) "Test" means any chemical test designed to determine the alcoholic or drug content of the blood. The specimen to be used for the test shall include blood, urine or breath.

**55-10-412. Disposition of fines — Collection of increased fines — County fund — Disposition of fund.**

(a) A portion of any fine imposed upon a person for a violation of § 55-10-401, up to the maximum fine actually imposed, shall be returned to the sheriff of a county jail or to the chief administrative officer of a city jail for the purpose of reimbursing the sheriff or officer for the cost of incarcerating the person for each night the person is actually in custody for a violation of § 55-10-401. This reimbursement shall be in the same amount as is provided by § 8-26-105, and shall not in any event be less than the actual cost of maintaining the person and shall be reimbursed in the manner provided by § 8-26-106.

(b) The proceeds from the increased portion of the fines for driving under the influence of an intoxicant provided for in chapter 948 of the Public Acts of 1994 shall be collected by the respective court clerks and then deposited in a dedicated county fund. This fund shall not revert to the county general fund at the end of a fiscal year but shall remain for the purposes set out in this section. For purposes of this section, the increased portion of the fine shall for all purposes be considered to be the first one hundred dollars (\$100) collected after the initial collection of two hundred fifty dollars (\$250) on a first offense, the first one hundred dollars (\$100) collected after the initial collection of five hundred dollars (\$500) on a second offense, and the first one hundred dollars (\$100) collected after the initial collection of one thousand dollars (\$1,000) on a third or subsequent offense.

(c) The respective counties shall be authorized to expend the funds generated by the increased fines provided for in chapter 948 of the Public Acts of 1994, by appropriations to any of the following:

(1) Alcohol, drug, and mental health treatment facilities licensed by the

department of mental health and substance abuse services;

(2) Metropolitan drug commissions or other similar programs sanctioned by the governor's Drug Free Tennessee program for the purposes of chapter 948 of the Public Acts of 1994;

(3) Organizations exempted from the payment of federal income taxes by § 501(c)(3) of the federal Internal Revenue Code, codified in 26 U.S.C. § 501(c)(3), whose primary mission is to educate the public on the dangers of illicit drug use, alcohol abuse, or the co-occurring disorder of both alcohol and drug abuse and mental illness or to render treatment for alcohol and drug addiction, or the co-occurring disorder of both alcohol and drug abuse and mental illness;

(4) Specialized court programs and specialized court dockets that supervise offenders who suffer from alcohol and drug abuse, or the co-occurring disorder of both alcohol and drug abuse and mental illness;

(5) Organizations that operate drug, alcohol, or co-occurring disorder treatment programs for the homeless or indigent;

(6) Agencies or organizations for purposes of drug testing of offenders who have been placed on misdemeanor probation; and

(7) The employment of a probation officer for the purposes of supervising drug and alcohol offenders.

**55-10-413. Additional fees — Ignition interlock fee — Alcohol and drug addiction treatment fee — Blood alcohol concentration test (BAT) fee — Blood alcohol or drug concentration test (BADT) fee — TBI toxicology unit intoxicant testing fund.**

(a) In addition to all other fines, fees, costs and punishments now prescribed by law, an ignition interlock fee of forty dollars (\$40.00) shall be assessed for each violation of § 55-10-401, which occurred on or after July 1, 2010 and resulted in a conviction for such offense.

(b) In addition to all other criminal penalties, costs, taxes and fees now prescribed by law, any person convicted of violating § 55-10-401 will be assessed a fee of five dollars (\$5.00), to be paid into the state treasury and deposited to the credit of the fund established pursuant to § 9-4-206.

(c)(1) In addition to all other fines, fees, costs and punishments now prescribed by law, an alcohol and drug addiction treatment fee of one hundred dollars (\$100) shall be assessed for each conviction for a violation of § 55-10-401.

(2) All proceeds collected pursuant to subdivision (c)(1), shall be transmitted to the commissioner of mental health and substance abuse services for deposit in the special "alcohol and drug addiction treatment fund" administered by the department.

(d)(1) In addition to all other fines, fees, costs and punishments now prescribed by law, in counties having a population of not less than three hundred thirty-five thousand (335,000) nor more than three hundred thirty-six thousand (336,000), or in counties having a population of more than seven hundred thousand (700,000), according to the 1990 federal census or any subsequent federal census, a blood alcohol concentration test (BAT) fee in the amount of seventeen dollars and fifty cents (\$17.50) will be assessed upon conviction of an offense of driving while intoxicated for each offender who has taken a breath-alcohol test on an evidential breath testing unit

provided, maintained and administered by a law enforcement agency in the counties or where breath, blood or urine has been analyzed by a publicly funded forensic laboratory.

(2) In addition to all other fines, fees, costs and punishments now prescribed by law, in counties having a metropolitan form of government with a population greater than one hundred thousand (100,000), according to the 1990 federal census or any subsequent federal census, a BAT fee in an amount to be established by resolution of the legislative body of any county to which this subdivision (d)(2) applies, not to exceed fifty dollars (\$50.00), will be assessed upon conviction of an offense of driving while intoxicated for each offender who has taken a breath-alcohol test on an evidential breath testing unit provided, maintained and administered by a law enforcement agency in the counties or where breath, blood or urine has been analyzed by a publicly funded forensic laboratory.

(3) This fee shall be collected by the clerks of various courts of the counties and forwarded to the county trustee on a monthly basis and designated for exclusive use by the law enforcement testing unit of the counties if the BAT was conducted on an evidential breath testing unit. If the blood alcohol test was conducted by a publicly funded forensic laboratory, the fee shall be collected by the clerks of the various courts of the counties and forwarded to the county trustee on a monthly basis and designated for exclusive use by the publicly funded forensic laboratory.

(4) In counties having a metropolitan form of government with a population greater than one hundred thousand (100,000), according to the 1990 federal census or any subsequent federal census, this fee shall be collected by the clerks of the various courts of the counties and forwarded to the county trustee on a monthly basis. If the BAT was conducted on an evidential breath testing unit, seventeen dollars and fifty cents (\$17.50) of the fee shall be designated for exclusive use by the law enforcement testing unit of the county. The county trustee shall deposit the remainder of the fee in the general fund of the county. If the blood alcohol test was conducted by a publicly funded forensic laboratory, seventeen dollars and fifty cents (\$17.50) of the fee collected by the clerks of the various courts of the counties and forwarded to the county trustee on a monthly basis shall be designated for exclusive use by the publicly funded forensic laboratory. The county trustee shall deposit the remainder of the fee in the general fund of the county.

(e) Notwithstanding any other law to the contrary, in any county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census, upon conviction for a violation of § 55-10-401, § 55-10-415, § 55-10-421 or § 55-50-408, the court shall assess against the defendant a blood alcohol concentration test (BAT) fee to be established by the county legislative body of any county to which this subsection (e) applies in an amount not to exceed fifty dollars (\$50.00) for obtaining a blood sample for the purpose of performing a test to determine the alcoholic or drug content of the defendant's blood pursuant to § 55-10-406 that is incurred by the governmental entity served by the law enforcement agency arresting the defendant. The fee authorized by this subsection (e) shall only be assessed if a blood sample is actually taken from a defendant convicted of any of these offenses and the test is actually performed on the sample.

(f)(1) In addition to all other fines, fees, costs and punishments now prescribed by law, including the fee imposed pursuant to subsection (d), a blood alcohol or drug concentration test (BADT) fee in the amount of two hundred fifty dollars (\$250) shall be assessed upon a conviction for a violation of § 39-13-106, § 39-13-213(a)(2), § 39-13-218, § 39-17-418, § 55-10-205 or § 55-10-401, for each offender who has taken a breath alcohol test on an evidential breath testing unit provided, maintained and administered by a law enforcement agency for the purpose of determining the breath alcohol content or has submitted to a chemical test to determine the alcohol or drug content of the blood or urine.

(2) The fee authorized in subdivision (f)(1) shall be collected by the clerks of the various courts of the counties and forwarded to the state treasurer on a monthly basis for deposit in the Tennessee bureau of investigation (TBI) toxicology unit intoxicant testing fund created as provided in subdivision (f)(3), and designated for exclusive use by the TBI for the purposes set out in subdivision (f)(3).

(3) There is created a fund within the treasury of the state, to be known as the TBI toxicology unit intoxicant testing fund.

(A) Moneys shall be deposited to the fund pursuant to subdivision (f)(2), and as may be otherwise provided by law, and shall be invested pursuant to § 9-4-603. Moneys in the fund shall not revert to the general fund of the state, but shall remain available for appropriation to the Tennessee bureau of investigation, as determined by the general assembly.

(B) Moneys in the TBI toxicology unit intoxicant testing fund and available federal funds, to the extent permitted by federal law and regulation, shall be used to fund a forensic scientist position in each of the three (3) bureau crime laboratories, to employ forensic scientists to fill these positions, and to purchase equipment and supplies, pay for the education, training and scientific development of employees, or for any other purpose so as to allow the bureau to operate in a more efficient and expeditious manner. To the extent that additional funds are available, these funds shall be used to employ personnel, purchase equipment and supplies, pay for the education, training and scientific development of employees, or for any other purpose so as to allow the bureau to operate in a more efficient and expeditious manner.

(g)(1) In addition to all other fines, fees, costs and punishments now prescribed by law, including the fee imposed pursuant to subsection (d), a blood alcohol or drug concentration test (BADT) fee in the amount of one hundred dollars (\$100) shall be assessed upon conviction for a violation of § 39-13-106, § 39-13-213(a)(2), § 39-13-218 or § 55-10-401, if the blood or urine of the convicted person was analyzed by a publicly funded forensic laboratory or other forensic laboratory operated by and located in counties having a population of not less than eighty-seven thousand nine hundred (87,900) nor more than eighty-eight thousand (88,000), according to the 2000 federal census or any subsequent federal census, for the purpose of determining the alcohol or drug content of the blood.

(2) The fee authorized in subdivision (g)(1) shall be collected by the clerks of the various courts of the counties and shall be forwarded to the county trustees of those counties on a monthly basis and designated for the exclusive use of the publicly funded forensic laboratory in those counties.

**55-10-414. Seizure and forfeiture of vehicles.**

(a) The vehicle used in the commission of a person's second or subsequent violation of § 55-10-401, or the second or subsequent violation of any combination of § 55-10-401, and a statute in any other state prohibiting driving under the influence of an intoxicant, is subject to seizure and forfeiture in accordance with the procedure established in title 40, chapter 33, part 2. The department of safety is designated as the applicable agency, as defined by § 40-33-202, for all forfeitures authorized by this section.

(b) In order for subsection (a) to be applicable to a vehicle, the violation making the vehicle subject to seizure and forfeiture must occur in Tennessee and at least one (1) of the previous violations must have occurred within five (5) years of the current violation.

(c) It is the specific intent that a forfeiture action under this section shall serve a remedial and not a punitive purpose. The purpose of the forfeiture of a vehicle after a person's second or subsequent DUI violation is to prevent unscrupulous or incompetent persons from driving on Tennessee's highways while under the influence of alcohol or drugs. Driving a motor vehicle while under the influence of alcohol or drugs endangers the lives of innocent people who are exercising the same privilege of riding on the state's highways. There is a reasonable connection between the remedial purpose of this section, ensuring safe roads, and the forfeiture of a motor vehicle. While this section may serve as a deterrent to the conduct of driving a motor vehicle while under the influence of alcohol or drugs, it is nonetheless intended as a remedial measure. Moreover, the statute serves to remove a dangerous instrument from the hands of individuals who have demonstrated a pattern of driving a motor vehicle while under the influence of alcohol or drugs.

(d) Only P.O.S.T.-certified or state-commissioned law enforcement officers will be authorized to seize these vehicles under this section.

**55-10-415. Underage driving while impaired — Penalties.**

(a)(1) A person sixteen (16) years of age or older but under twenty-one (21) years of age may not drive or be in physical control of an automobile or other motor driven vehicle while:

(A) The alcohol concentration in the person's blood is more than two-hundredths of one percent (0.02%);

(B) Under the influence of alcohol;

(C) Under the influence of any intoxicant, marijuana, narcotic drug, or drug producing stimulating effects on the central nervous system; or

(D) Under the combined influence of alcohol and any other drug set out in subdivision (a)(1)(C) to a degree that makes the person's driving ability impaired.

(2) For purposes of this section, "drug producing stimulating effects on the central nervous system" has the same meaning and includes the same items set out in former § 55-10-401(b) [repealed].

(b) The fact that any person who drives while under the influence of narcotic drugs or barbitol drugs is or has been entitled to use the drugs under the laws of this state does not constitute a defense to the violation of this section.

(c) This section establishes the offense of underage driving while impaired for any person sixteen (16) years of age or older but under twenty-one (21) years of age. The offense of underage driving while impaired is a lesser

included offense of driving while intoxicated.

(d)(1) The offense of underage driving while impaired for a person eighteen (18) years of age or older but under twenty-one (21) years of age is a Class A misdemeanor punishable only by a driver license suspension of one (1) year and by a fine of two hundred fifty dollars (\$250). As additional punishment, the court may impose public service work.

(2) The delinquent act of underage driving while impaired for a person sixteen (16) years of age or older but under eighteen (18) years of age is punishable only by a driver license suspension of one (1) year and by a fine of two hundred fifty dollars (\$250). As additional punishment, the court may impose public service work.

(e) A person sixteen (16) years of age or older but under eighteen (18) years of age who commits the offense of underage driving while impaired commits a delinquent act.

#### **55-10-416. Open container law.**

(a)(1) No driver shall consume any alcoholic beverage or beer or possess an open container of alcoholic beverage or beer while operating a motor vehicle in this state.

(2) For purposes of this section:

(A) "Open container" means any container containing alcoholic beverages or beer, the contents of which are immediately capable of being consumed or the seal of which has been broken;

(B) An open container is in the possession of the driver when it is not in the possession of any passenger and is not located in a closed glove compartment, trunk or other nonpassenger area of the vehicle; and

(C) A motor vehicle is in operation if its engine is operating, whether or not the motor vehicle is moving.

(b)(1) A violation of this section is a Class C misdemeanor, punishable by fine only.

(2) For a violation of this section, a law enforcement officer shall issue a citation in lieu of continued custody, unless the offender refuses to sign and accept the citation, as provided in § 40-7-118.

(c) This section shall not be construed to prohibit any municipality, by ordinance, or any county, by resolution, from prohibiting the passengers in a motor vehicle from consuming or possessing an alcoholic beverage or beer in an open container during the operation of the vehicle by its driver, or be construed to limit the penalties authorized by law for violation of the ordinance or resolution.

#### **55-10-417. Ignition interlock devices.**

(a)(1)(A) A court may order the installation and use of an ignition interlock device for any conviction of § 55-10-401, if the driver's license is no longer suspended or revoked or the driver does not have a prior conviction as defined in § 55-10-405. The restriction may apply for up to one (1) year after the person's license is reinstated.

(B) The provisions of this subdivision (a)(1), authorizing the court to order an ignition interlock device for a violation of § 55-10-401, shall only apply when the court is not otherwise required to order an ignition interlock device by this part.

(2) If a person is convicted of a first offense of § 55-10-401, and the person is not required to operate only a motor vehicle with an ignition interlock device pursuant to § 55-10-409(b)(2)(B), and the person is otherwise eligible for a restricted license pursuant to § 55-10-409(b)(1)(A), such person may request and the court may order the installation and use of an ignition interlock device in lieu of geographic restrictions or additional limitations on the restricted license. A person so requesting shall pay all costs associated with the ignition interlock device and no funds from the interlock assistance fund shall be used to pay any cost associated with the device, regardless of whether or not the person is indigent.

(3) If a person is ordered to install and use the device due to the requirements of § 55-10-409 or subdivision (a)(1), subdivision (a)(2), or subsection (l) due to a violation of either § 55-10-401 or § 55-10-406, the restriction shall be a condition of probation or supervision for the entire period of the restriction.

(b) [Deleted by 2013 amendment, effective July 1, 2013.]

(c) Upon ordering a functioning ignition interlock device pursuant to § 55-10-409 or subdivision (a)(1), subdivision (a)(2) or subsection (l) the court shall establish a specific calibration setting of two-hundredths of one percent (0.02%) blood alcohol concentration at which the functioning ignition interlock device will prevent the motor vehicle from being started.

(d) Upon ordering the use of a functioning ignition interlock device pursuant to § 55-10-409 or subdivision (a)(1), subdivision (a)(2), or subsection (l) the court shall:

(1) State on the record the requirement for and the period of use of the device and so notify the department of safety;

(2) Notify the department of corrections, the department of safety or any other agency, department, program, group, private entity or association that is responsible for the supervision of the person ordered to drive only a motor vehicle with a functioning ignition interlock device;

(3) Direct that the records of the department reflect:

(A) That the person may not operate a motor vehicle that is not equipped with a functioning ignition interlock device; and

(B) Whether the court has expressly permitted the person to operate a motor vehicle without a functioning ignition interlock device for employment purposes under subsection (m); and

(4) Direct the department to attach or imprint a notation on the motor vehicle operator's license of any person restricted under this section, stating that the person may operate only a motor vehicle equipped with a functioning ignition interlock device.

(e) Upon the court ordering a person to operate only a motor vehicle equipped with a functioning ignition interlock device pursuant to § 55-10-409, subdivision (a)(1) or subsection (l), the court, the department of corrections or any other agency, department, program, group, private entity or association that is responsible for the supervision of such person shall:

(1) Require proof of the installation of the functioning ignition interlock device on at least one (1) motor vehicle operated by such person;

(2) Require periodic reporting by the person for verification of the proper operation of the functioning ignition interlock device;

(3) Require the person to have the system monitored for proper use and accuracy by an entity approved by the department of safety at least every

thirty (30) days, or more frequently as the circumstances may require; and

(4) Notify the court of any of the person's violations of this part.

(f)(1) If a person is ordered to drive only a motor vehicle with a functioning ignition interlock device, and such person owns or operates more than one (1) motor vehicle, the court shall also order the person to elect a motor vehicle such person will operate exclusively during the interlock period and order the device to be installed on such motor vehicle prior to applying for a motor vehicle operator's license of any kind and shall show proof of such installation and operation of such device at the time of making application for a motor vehicle operator's license to the department of safety or to the court. A person may elect to have a functioning interlock device installed on more than one (1) motor vehicle.

(2) If the motor vehicle that the person has elected to exclusively operate during the interlock period is no longer being used by such person, the person shall have any replacement motor vehicle exclusively used by such person installed with a functioning ignition interlock device and notify the department of safety and any agency, department, program, group, private entity or association that is responsible for the supervision of such person.

(g) A person prohibited under this part from operating a motor vehicle that is not equipped with a functioning ignition interlock device shall not solicit or have another person attempt to start or start a motor vehicle equipped with such a device.

(h) A person shall not attempt to start or start a motor vehicle equipped with a functioning ignition interlock device for the purpose of providing an operable motor vehicle to a person who is prohibited under this section from operating a motor vehicle that is not equipped with a functioning ignition interlock device.

(i) A person shall not tamper with, or in any way attempt to circumvent, the operation of a functioning ignition interlock device that has been installed in a motor vehicle.

(j) A person shall not knowingly provide a motor vehicle not equipped with a functioning ignition interlock device to another person who the provider of the vehicle knows or should know is prohibited from operating a motor vehicle not equipped with a functioning ignition interlock device.

(k) Except as provided in subdivision (k)(4), a person who violates subsections (g), (h), (i) or (j) commits a Class A misdemeanor:

(1) If the violation is the person's first violation, such person shall be sentenced to a minimum of forty-eight (48) hours of incarceration;

(2) If the violation is the person's second violation, such person shall be sentenced to a minimum of seventy-two (72) hours of incarceration;

(3) If the violation is the person's third or subsequent violation, such person shall be sentenced to a minimum of seven (7) consecutive days of incarceration;

(4) The penalty provisions of this subsection (k) shall not apply if:

(A) The starting of a motor vehicle, or the request to start a motor vehicle, equipped with a functioning ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle, and the person subject to the court order does not operate the vehicle; or

(B) The court finds that a person is required to operate a motor vehicle in the course and scope of the person's employment, the requirements set out in subsection (m) are met, the vehicle is owned by the employer, and the vehicle is being operated by the person during regular working hours

for the purposes of employment.

(l) If a person convicted of a violation of § 55-10-401 has a prior conviction as defined in § 55-10-405 within the past five (5) years, the court shall order the person, or the department of safety shall require the person prior to issuing a motor vehicle operator's license of any kind, to operate only a motor vehicle, after the license revocation period, which is equipped with a functioning interlock device for a period of six (6) months.

(m)(1) Any person ordered to operate only a motor vehicle equipped with a functioning ignition interlock device pursuant to § 55-10-409, subdivision (a)(1) or subsection (l) may, solely in the course of employment, operate a motor vehicle, which is owned or provided by such person's employer, without installation of a functioning ignition interlock device, if:

(A) The court expressly permits such operation;

(B) The employer has been notified of such driving privilege restriction; and

(C) Proof of the notification set out in subdivision (m)(1)(B) is within the vehicle, provided to the court and provided to the person's probation officer or the person responsible for the supervision of the defendant.

(2) If a court permits a person to operate a vehicle pursuant to subdivision (m)(1), the court may also place additional driving restrictions on such person that the court deems necessary to ensure compliance with this section.

(3) Subdivision (m)(1) shall not apply if such employer is an entity wholly or partially owned by the person subject to this section. If such employer is an entity wholly or partially owned by the person subject to this section, the person shall be required to drive only a motor vehicle with a functioning ignition interlock device and no such employer exemption shall be available to such person.

**55-10-418. Maximum allowable fees — Reports by ignition interlock providers — Report by TBI to judiciary committees on offense of driving under the influence — Report by department of safety to judiciary committees on number of offenders who have had ignition interlock devices installed.**

(a) From January 1, 2011, until June 30, 2012:

(1) An ignition interlock provider shall not charge more than seventy dollars (\$70.00) for installing one (1) ignition interlock device; and

(2) An ignition interlock provider shall not charge more than a total of one hundred dollars (\$100) per month for leasing, purchasing, monitoring, removing and maintaining an ignition interlock device.

(b) By July 1, 2012, the department of safety shall establish, through rules and regulations promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5:

(1) The maximum fees that may be charged for installing, leasing, purchasing, monitoring, removing and maintaining an ignition interlock device; and

(2) Requirements that ensure that certified ignition interlock providers have the ability to provide devices to any resident in the state.

(c)(1) From January 1, 2011, until January 1, 2012, the department of safety

in consultation with the treasurer shall conduct a study to determine:

(A) The amount of fee that should be established pursuant to § 55-10-413(a) in order to keep the interlock assistance fund solvent;

(B) The maximum fees to be charged pursuant to subsection (b), taking into consideration the goal of making the interlock device affordable to all offenders in this state; and

(C) The necessary requirements that should be established in order to ensure that providers have the ability to provide devices to any resident in the state.

(2) The department of safety shall report the findings of its study conducted pursuant to subdivision (c)(1) to the judiciary committees of the senate and the house of representatives on or before January 1, 2012.

(d) Any licensed ignition interlock provider providing a functioning ignition interlock device to a person pursuant to this part shall report to the department of correction, or any other agency, department, program, group, private entity or association that is responsible for the supervision of a person who is ordered to drive only a motor vehicle with a functioning ignition interlock device installed on such vehicle as a condition of such person's probation, any evidence of such person's:

(1) Altering, tampering with, bypassing, or removing a functioning ignition interlock device;

(2) Failing to abide by the terms or conditions ordered by the court, including, but not limited to, failing to appear for scheduled monitoring visits; and

(3) Attempting to start the motor vehicle while under the influence of alcohol.

(e) The Tennessee bureau of investigation, beginning February 1, 2012, and thereafter annually, on or before February 1, shall report in writing to the judiciary committee of the senate and the criminal justice committee of the house of representatives the number of times the offense of driving under the influence, set out in § 55-10-401, was charged at the time of arrest, if reported to the bureau, and any associated final disposition that has been received for the arrest.

(f) The department of safety, beginning February 1, 2012, and thereafter annually, on or before February 1, shall report in writing to the judiciary committee of the senate and the criminal justice committee of the house of representatives the number of offenders who have, in the previous year, had installed on their motor vehicles functioning ignition interlock devices and whether the installation of each device was pursuant to the requirement set out in:

(1) § 55-10-409(b)(2)(B);

(2) § 55-10-409(b)(2)(D);

(3) § 55-10-409(d)(2);

(4) § 55-10-417(a)(1); or

(5) § 55-10-417(l).

(g) For purposes of this section, "previous year" means from January 1 to December 31 of the year immediately preceding the February 1 reporting date.

**55-10-419. Interlock assistance fund — Responsibility for costs to comply with ignition interlock requirements — Indigency.**

(a)(1) There is created in the state treasury a fund to be known as the interlock assistance fund. Except as provided in subsection (f), all money in such fund shall be used to pay for the costs associated with the lease, purchase, installation, removal and maintenance of such device or with any other cost or fee associated with a functioning ignition interlock device required by this part, of persons deemed by the court to be indigent. Moneys in the fund shall not revert to the general fund of the state, but shall remain available to be used as provided for in subsection (f).

(2) Interest accruing on investments and deposits of the interlock assistance fund shall be credited to such account, shall not revert to the general fund, and shall be carried forward into each subsequent fiscal year.

(3) Moneys in the interlock assistance fund account shall be invested by the state treasurer in accordance with § 9-4-603.

(b) Except as otherwise provided in § 55-10-409(b)(2)(D), the costs incurred in order to comply with the ignition interlock requirements shall be paid by the person ordered to install a functioning ignition interlock device, unless the court finds such person to be indigent. If a court determines that a person is indigent, the court shall order such person to pay any portion of the costs which the person has the ability to pay, as determined by the court. Any portion of the costs the person is unable to pay shall come from the interlock assistance fund established pursuant to subsection (a).

(c) Whenever a person ordered to install a device pursuant to § 55-10-409(b)(2), § 55-10-409(d)(2), § 55-10-417(a)(1) or § 55-10-417(l) asserts to the court that the person is indigent and financially unable to pay for a functioning ignition interlock device, it shall be the duty of the court to conduct a full and complete hearing as to the financial ability of the person to pay for such device and, thereafter, make a finding as to the indigency of such person.

(d) A person is indigent and financially unable to pay for a functioning ignition interlock device if the person is receiving an annual income, after taxes, of one hundred eighty-five percent (185%) or less of the poverty guidelines updated periodically in the federal register by the United States department of health and human services under the authority of 42 U.S.C. § 9902(2).

(e) Every person who informs the court that the person is financially unable to pay for a functioning ignition interlock device shall be required to complete an affidavit of indigency that is designed by the administrative office of the courts for purposes of assisting the court in making its determination pursuant to subsection (c). If the person intentionally misrepresents, falsifies or withholds any information required by the affidavit of indigency, such person commits perjury as set out in § 39-16-702.

(f)(1) If at any time after January 1, 2011, there are no funds in the interlock assistance fund or the fund is depleted, any indigent person required to have a functioning ignition interlock device who is ordered to have such pursuant to:

(A) Section 55-10-409(b)(2) or § 55-10-409(d)(2) shall be ineligible for a restricted license; or

(B) Section 55-10-417(a)(1) or § 55-10-417(l) shall be ineligible to have such person's license reinstated.

(2) If at any time during the period in which an indigent person is not eligible for a restricted license or reinstatement of the person's motor vehicle operator's license due to subdivision (f)(1), such person may petition the court to have a portion or all of the costs of the ignition interlock device paid by funds from the interlock assistance fund if at any time funds become available.

(g)(1) All proceeds collected pursuant to § 55-10-413(a) shall be transmitted to the treasurer for deposit in the interlock assistance fund.

(2) The fee assessed pursuant to subdivision § 55-10-413(a) shall be allocated as follows:

(A) Thirty dollars and fifty cents (\$30.50) to the interlock assistance fund for the purpose of paying for all the costs associated with the lease, purchase, installation, removal and maintenance of such device or with any other cost or fee associated with a functioning ignition interlock device required by this part for persons found to be indigent by the court; and

(B) Four dollars fifty cents (\$4.50) to the Tennessee Hospital Association for the sole purposes of making grants to hospitals that have been designated as critical access hospitals under the Medicare rural flexibility program for the purposes of purchasing medical equipment, enhancing high technology efforts and expanding healthcare services in underserved areas;

(C) One dollar twenty-five cents (\$1.25) to the department of mental health and substance abuse services to be placed in the alcohol and drug addiction treatment fund;

(D) One dollar twenty-five cents (\$1.25) to the department of finance and administration, office of criminal justice programs, for the sole purpose of funding grant awards to local law enforcement agencies for purposes of obtaining and maintaining equipment and personnel needed in the enforcement of alcohol related traffic offenses;

(E) One dollar twenty-five cents (\$1.25) to the department of safety to be used to defray the expenses of administering this part; and

(F) One dollar twenty-five cents (\$1.25) to the department of finance and administration, office of criminal justice programs, for the sole purpose of funding grant awards to halfway houses whose primary focus is to assist drug and alcohol offenders. In order for a halfway house to qualify for such grant awards it shall provide:

(i) No less than sixty (60) residential beds monthly with occupancy at no less than ninety-seven percent (97%) per month, or if a halfway house with nonresidential day reporting services, it shall serve no less than two hundred (200) adults monthly;

(ii) Safe and secure treatment facilities, and treatment to include moral recognition therapy, GED course work, anger management therapy, and domestic and family counseling; and

(iii) Transportation to and from work, mental health or medical appointments for each of its residents.

(3)(A) Beginning in fiscal year 2013-2014, any surplus in the interlock assistance fund shall be allocated as follows:

(i) Sixty percent (60%) of such surplus shall be used by the Tennessee Hospital Association for the sole purposes of making grants to hospitals that have been designated as critical access hospitals under the Medicare rural flexibility program for the purposes of purchasing medical equipment, enhancing high technology efforts and expanding healthcare

services in underserved areas;

(ii) Twenty percent (20%) of such surplus shall be transmitted to the department of mental health and substance abuse services and placed in the alcohol and drug addiction treatment fund; and

(iii) Twenty percent (20%) of such surplus shall be used by the department of finance and administration, office of criminal justice programs, to provide grants to local law enforcement agencies for purposes of obtaining and maintaining equipment or personnel needed in the enforcement of alcohol related traffic offenses.

(B) Beginning on July 1, 2013, and annually thereafter, the treasurer shall conduct an analysis to determine the solvency of the interlock assistance fund. The treasurer may declare a surplus if the analysis determines that there is a balance in excess of the amount necessary to maintain the solvency of the fund, and shall report the amount of any surplus to the commissioner of finance and administration for inclusion in the annual budget document prepared pursuant to title 9, chapter 4, part 51.

(h) For purposes of this section, "previous year" means from January 1 to December 31 of the year immediately preceding the February 1 reporting date.

**55-10-420. Litter removal program.**

(a) When the offender first reports to the offender's probation officer, the probation officer shall provide the offender with a form to be completed by the sheriff of the county where litter removal is to be performed. It is the responsibility of the offender to take the form to the sheriff of the county where the offender will perform litter removal. After completion of the court-ordered number of days of litter removal by the offender and the payment of the supervision fee required by subdivision (b)(2) to the sheriff for participating in the litter removal program, the sheriff shall complete the form and certify that the offender has complied with this condition of probation. The sheriff shall give the completed form to the offender, who shall be responsible for returning the form to the offender's probation officer as evidence of completion of this condition of probation. If an offender believes that the offender is incapable of performing such work due to a physical limitation, the offender may request the convicting court to relieve the offender from this condition of probation. The court may require the offender to submit proof of physical limitation, as it deems appropriate, to determine if the offender should be relieved.

(b)(1) If the offender is a resident of this state, the litter removal portion of the sentence shall occur in the offender's county of residence through the appropriate probation office or state litter removal grant director. If the offender is not a resident of this state, the litter removal portion of the sentence shall occur in the county where the violation occurred.

(2) In order to compensate the probation office or county official who administers the state litter removal grant for costs related to the supervision of the offender while on a litter removal work crew, the offender shall pay to the probation office or county official who administers the state litter removal grant a fee for each day the offender participates in a litter removal program. The fee shall be fixed by resolution of the county legislative body. The probation office or county official that administers the state litter removal grant may collect the fee before the offender is permitted to perform

litter removal services, after each day service is performed, or after all days of litter removal service have been performed, but the fee shall be collected before the office certifies that the offender has completed this condition of probation. The judge has the authority, however, to make an affirmative finding that the offender lacks a present ability to pay the fee and to include such finding in the sentencing order, which shall be submitted to the probation office or county official that administers the state litter removal grant.

(3) Upon request, the probation office or county official who administers the state litter removal grant shall provide the offender with a schedule of the times and dates when litter removal crews will be working. Crews shall only be scheduled to work during daylight hours and only on public roadways or publicly owned property. The probation office or county official who administers the state litter removal grant should attempt to provide enough opportunities to work on a litter removal crew that an offender may complete the required three (3) days of litter removal within a ninety-day period. Offenders may work with other prisoners on litter removal crews organized by the county or a municipality within the county. The offender shall notify the probation office not less than twenty-four (24) hours in advance of a scheduled work date to indicate that the offender desires to participate. The probation office or county official who administers the state litter removal grant may set a maximum number of participants on a work crew and allow participation on a first-come, first-served basis. The offender is responsible for arranging transportation to and from the work site or other location where the probation office directs offenders to report. Except for the vest required by subdivision (b)(4), offenders are also responsible for furnishing their own clothing and food while engaged in litter removal.

(4) Each offender ordered to remove litter pursuant to § 55-10-402(a)(1) shall be required to wear a blaze orange or other distinctively colored vest with the words "I AM A DRUNK DRIVER" stenciled or otherwise written on the back of the vest, in letters no less than four inches (4") in height.

(5) It shall be within the discretion of the probation office or county official who administers the state litter removal grant to select the public roadways or publicly owned property from which offenders remove litter. If the highway selected is a state route highway or state-owned public property, the department of transportation shall provide a truck or trucks to remove the litter removed by the offenders. If the highway selected is a state-aid highway or county-owned public property, the appropriate county shall provide a truck or trucks to remove the litter removed by the offenders.

(6) The probation office or county official who administers the state litter removal grant may enter into agreements with any city or municipality located within the county in which offenders sentenced pursuant to this section may be used to remove litter from state route highways or state-aid highways located within the limits of the city or municipality. The agreement may provide that the city or municipality assume responsibility for the supervision and control of the offenders.

(7) If any entity receives funds under § 41-2-123(c), the offenders shall be the responsibility of the entity supervising that program and under that entity's supervision and control. In any county where that is the case, "probation office" as used in this section shall be interpreted instead to mean the individual or department head in charge of the alternative program.

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(8) No probation office or county official who administers the state litter removal grant shall be permitted to use an offender sentenced pursuant to this section to perform any task other than litter removal.

(9) Nothing in this subsection (b) shall be construed to require that the department of correction supervise DUI offenders engaged in the DUI offender litter removal program established by this section or otherwise be involved in such program.

**55-10-421. Adult driving while impaired.**

(a) Effective July 1, 2003, the offense of adult driving while impaired is repealed.

(b) Nothing in the repeal of the offense of adult driving while impaired shall be construed to prohibit or prevent the use of any conviction for the offense occurring prior to July 1, 2003, for any of the purposes set out in §§ 55-10-405, 55-10-406, 55-10-409, 55-10-411(b)(2), 55-10-603(2)(A)(x) or 55-50-502(c)(3)(B)(ii).

**55-10-422. Program development fee required for applicants for restricted license for vehicle with ignition interlock device.**

A person whose license has been suspended pursuant to this part and who applies for a restricted license to operate only a motor vehicle that is equipped with a functioning ignition interlock device shall be required to pay a program development fee of eight dollars (\$8.00). The fee required by this section shall terminate on June 30, 2014.

**55-10-423. Confidentiality of information about interlock program participant.**

All documents, records, identifying information, monitoring data or results and other information recorded, collected, maintained, transmitted or stored by an ignition interlock provider about or concerning an interlock program participant is confidential and not available for public inspection. All such information shall retain its confidentiality when it is transmitted, electronically or otherwise, maintained and stored, examined or used by a monitoring authority. Only authorized employees of an ignition interlock provider or monitoring authority may view any document made confidential by this section.

**55-10-451. [Transferred.]**

**55-10-452. [Transferred.]**

**55-10-453. [Transferred.]**

**55-10-454. [Transferred.]**

**55-10-503. Additional penalties — Restricted licenses — Revocation of license.**

(a)(1) In addition to the punishment prescribed in § 55-10-502, the department shall revoke, for a period of one (1) year, the driver license of any

person or persons convicted of drag racing.

(2) Notwithstanding subdivision (a)(1), the trial judge has the discretion to allow the continued use of a restricted motor vehicle operator's license or order the issuance of a restricted motor vehicle operator's license to a person convicted of drag racing for the first time to the same extent, for the same purposes, under the same conditions and in the same manner as is authorized in § 55-10-409 for persons convicted for the first time of driving under the influence of an intoxicant.

(b) In addition to the punishment prescribed in subdivision (a)(1), the department shall permanently revoke the driver license of any person or persons convicted of drag racing for the second time within a ten-year period, and the person or persons shall not thereafter be entitled to drive or operate a motor vehicle upon any public highway of this state.

### **55-10-603. Part definitions.**

For the purposes of this part:

(1) "Conviction" means a final conviction. A forfeiture of bail or other security deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, is a conviction for the purposes of this part;

(2) "Habitual offender" means:

(A) Any person who, during a three-year period, is convicted in a Tennessee court or courts of three (3) or more of the following offenses; any person who, during a five-year period, is convicted in a Tennessee court or courts of three (3) or more of the following offenses; or any person who, during a ten-year period, is convicted in a Tennessee court or courts of five (5) or more of the following offenses; provided, that if the five- or ten-year period is used, one (1) of the offenses occurred after July 1, 1991:

(i) Voluntary manslaughter resulting from the operation of a motor vehicle;

(ii) Vehicular homicide as defined in § 39-13-213;

(iii) Involuntary manslaughter resulting from the operation of a motor vehicle;

(iv) Vehicular assault as defined in § 39-13-106;

(v) A violation of § 55-8-151(a), relating to meeting or overtaking school buses;

(vi) A violation of § 55-10-101(a), relating to the duty to stop at the scene of an accident resulting in injury or death;

(vii) A violation of § 55-10-102, relating to the duty to stop at the scene of an accident resulting only in damage to a vehicle driven or attended by any person;

(viii) A violation of § 55-10-401, prohibiting intoxicated or drugged persons from driving or being in physical control of any automobile or other motor vehicle;

(ix) A violation of § 39-13-218, relative to aggravated vehicular homicide;

(x) A violation of § 55-10-421, relative to adult driving while impaired;

(xi) A violation of § 55-10-205, relative to reckless driving;

(xii) A violation of § 55-10-502, relative to drag racing;

(xiii) A violation of § 39-16-603(b), relating to evading arrest in a

motor vehicle;

(xiv) A violation of § 39-13-103, relating to reckless endangerment by use of a motor vehicle; or

(xv) A violation of § 55-50-504, relating to driving on a cancelled, suspended or revoked license if the underlying offense resulting in the cancellation, suspension or revocation is an offense enumerated in subdivision (2)(A)(i)-(2)(A)(xiv);

(B) The violation of an ordinance of any political subdivision of this state shall be equivalent to the violation of state statutes if the elements of the offense covered by the ordinance are the same as the elements of the offense covered by the comparable state statute; and

(3) "Tennessee courts" includes not only state courts, but also courts of local jurisdiction duly established by a political subdivision of the state.

#### **55-12-102. Chapter definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Autocycle" means an autocycle as defined in § 55-1-103;

(2) "Bond" means irrevocable bond executed by a corporate surety company licensed to do business as a corporate surety company in this state, with penalties of like amounts as those pertaining to an insurance policy or the amount of damages suffered, whichever is less, the bond to guarantee the payment of any final judgment which might thereafter be rendered against the bonded party resulting from the accident up to and including the total amount of the bond, except the bond may specify a limited payment to those persons who have at the time of its execution filed claims with the commissioner, and shall contain a clause therein that it shall remain in force for one (1) year from the date of the accident or until final determination of any court action brought as a result of the accident, whichever may be the longer period of time;

(3) "Commissioner" means the commissioner of safety, unless otherwise indicated or unless the context otherwise requires;

(4) "Judgment" means any judgment that shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance, or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof;

(5) "License" means any license, temporary instruction permit, or temporary license issued under the laws of this state, or any other state, pertaining to the licensing of persons to operate motor vehicles within this state;

(6) "Motor vehicle" means every self-propelled vehicle that is designed for use upon the highway, including trailers and semitrailers designed for use with motor vehicles, and every vehicle that is propelled by electric power obtained from overhead wires but not operated upon rails, except traction engines, road rollers and farm tractors. "Motor vehicle" does not include "motorized bicycle" as defined in § 55-8-101;

(7) "Motor vehicle liability policy" means an "owner's policy" or "operator's policy" of liability insurance, certified as provided in § 55-12-120 or § 55-

12-121 as proof of financial responsibility, and issued, except as otherwise provided in § 55-12-121 by an insurance carrier duly licensed or admitted to transact business in this state, to or for the benefit of the person named therein as insured;

(8) “Nonresident” means every person who is not a resident of this state;

(9) “Nonresident operating privileges” means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation of a motor vehicle, or the use of a motor vehicle owned by the nonresident, in this state;

(10) “Operator” means every person who is in actual physical control of a motor vehicle whether or not licensed as an operator or chauffeur under the laws of this state;

(11) “Owner” means a person who holds the legal title of a motor vehicle, or in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then the conditional vendee, lessee or mortgagor shall be deemed the owner for the purpose of this chapter;

(12) “Proof of financial responsibility” or “proof of financial security” means:

(A)(i) If proof is required after December 31, 1989, but prior to January 1, 2009, such proof means:

(a) A written proof of liability insurance coverage provided by a single limit policy with a limit of not less than sixty thousand dollars (\$60,000) applicable to one (1) accident;

(b) A split-limit policy with a limit of not less than twenty-five thousand dollars (\$25,000) for bodily injury to or death of one (1) person, not less than fifty thousand dollars (\$50,000) for bodily injury to or death of two (2) or more persons in any one (1) accident, and not less than ten thousand dollars (\$10,000) for damage to property in any one (1) accident;

(c) A deposit of cash with the commissioner in the amount of sixty thousand dollars (\$60,000); or

(d) The execution and filing of a bond with the commissioner in the amount of sixty thousand dollars (\$60,000).

(ii) An insured holding a policy that complies with the insurance requirements of the financial responsibility law on December 31, 1989, will not be deemed to be in violation of the law if the policy meets the limits specified in subdivisions (12)(A)(i)(a)-(d) as of the first renewal after that date;

(B)(i) If proof is required after December 31, 2008, proof means:

(a) A written proof of liability insurance coverage provided by a single limit policy with a limit of not less than sixty thousand dollars (\$60,000) applicable to one (1) accident;

(b) A split-limit policy with a limit of not less than twenty-five thousand dollars (\$25,000) for bodily injury to or death of one (1) person, not less than fifty thousand dollars (\$50,000) for bodily injury to or death of two (2) or more persons in any one (1) accident, and not less than fifteen thousand dollars (\$15,000) for damage to property in any one (1) accident;

(c) A deposit of cash with the commissioner in the amount of sixty thousand dollars (\$60,000); or

(d) The execution and filing of a bond with the commissioner in the amount of sixty thousand dollars (\$60,000).

(ii) An insured holding a policy that complies with the insurance requirements of the financial responsibility law on December 31, 2008, will not be deemed to be in violation of the law if the policy meets the limits specified in subdivision (12)(B)(i)(a)-(d) as of the first renewal after December 31, 2008;

(13) "Registration" means a registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles; and

(14) "State" means any state, territory or possession of the United States, the District of Columbia, or any province of the Dominion of Canada.

**55-12-114. Suspension of all registrations upon suspension or revocation of license — Exception upon filing proof of financial responsibility — Release — Compliance by Tennessee resident moving to or returning from another state.**

(a) Whenever the commissioner of safety, under any law of this state, suspends or revokes the license of any person by reason of a conviction, then the commissioner of safety shall request that the commissioner of revenue suspend or revoke all registrations in the name of that person and those registrations shall be suspended or revoked immediately; provided, that the registrations in the name of that person shall not be suspended, unless otherwise required by law, if that person has previously given or shall immediately give and shall maintain for three (3) years, proof of financial responsibility.

(b) Prior to the issuance of a restricted license as authorized by §§ 55-10-409, 55-50-502 and 55-50-505, the licensee shall give and maintain for the duration of the license's suspension or revocation proof of financial responsibility as required by § 55-12-126.

(c) When the person's license or registrations or both license and registrations are restored after suspension or revocation, the person shall give and shall maintain for three (3) years proof of financial responsibility as required by § 55-12-126, pay a one hundred-dollar restoration fee and pass the driver license examination as a condition precedent to the restoration of the license. Any person convicted of driving on a revoked license pursuant to § 55-50-504, when the original suspension or revocation was made for a violation of an offense not requiring mandatory revocation, shall pay a sixty-five-dollar restoration fee. Upon restoration of a person's license, the commissioner of safety shall request that the commissioner of revenue reinstate the motor vehicle owner's registration and, upon payment to the commissioner of revenue of the appropriate motor vehicle registration fees provided by § 55-4-111, § 55-4-112 or § 55-4-113, that registration shall be reinstated immediately.

(d) At any time after five (5) years from the date of revocation, the department of safety may, in its own discretion, or upon request of the person required to furnish proof of financial responsibility, release the requirement of that proof, if the records of the department of safety establish that the person,

during the preceding five-year period, has not been convicted of any offense authorizing or requiring the suspension or revocation of a license or registration by the department of safety or by the department of revenue, and has not suffered suspension, revocation, prohibition, or cancellation of license as ordered by the department of safety or by a court. If the department of safety, pursuant to this subsection (d), releases the requirement that a person furnish proof of financial responsibility, and if that person's motor vehicle registration has been suspended or revoked due to failure to furnish that proof, then the commissioner of safety shall request that the commissioner of revenue reinstate the motor vehicle owner's registration and, upon payment of the appropriate motor vehicle registration fees to the commissioner of revenue provided by § 55-4-111, § 55-4-112 or § 55-4-113, the registration shall be reinstated immediately. Notwithstanding any other law to the contrary, this subsection (d) shall not apply if there is an unsatisfied judgment based on a motor vehicle accident.

(e) A Tennessee resident who moves to another state during the period of any cancellation, suspension, or revocation in this state shall be deemed to be in compliance with this section when certification is received by the department that financial responsibility laws have been met in the new state, and upon meeting all other requirements and conditions for reinstatement of driving privileges in this state. If the person returns to this state as a legal Tennessee resident and re-applies for a Tennessee driver license, the requirements for regaining driving privileges shall be the same as any other Tennessee resident.

(f) When any driver licensed in another state applies for a Tennessee driver license, and a cancellation, suspension, or revocation action from the former state is in effect, the department, upon compliance with provisions of this title, may issue a Tennessee driver license to the driver as if the original action had been taken in this state.

**55-12-139. Compliance with financial responsibility law required — Evidence of compliance — Issuance of citations by police service technicians.**

(a) This chapter shall apply to every vehicle subject to the registration and certificate of title provisions.

(b) At the time the driver of a motor vehicle is charged with any violation under chapters 8 and 10, parts 1-5, and chapter 50 of this title; any other local ordinance regulating traffic; or at the time of an accident for which notice is required under § 55-10-106, the officer shall request evidence of financial responsibility as required by this section. In case of an accident for which notice is required under § 55-10-106, the officer shall request evidence of financial responsibility from all drivers involved in the accident, without regard to apparent or actual fault. For the purposes of this section, "financial responsibility" means:

(1) Documentation, such as the declaration page of an insurance policy, an insurance binder, or an insurance card from an insurance company authorized to do business in Tennessee, whether in paper or electronic format, stating that a policy of insurance meeting the requirements of this chapter, has been issued;

(2) A certificate, valid for one (1) year, issued by the commissioner of safety, stating that a cash deposit or bond in the amount required by this chapter, has been paid or filed with the commissioner, or has qualified as a self-insurer under § 55-12-111; or

(3) The motor vehicle being operated at the time of the violation was owned by a carrier subject to the jurisdiction of the department of safety or the interstate commerce commission, or was owned by the United States, this state or any political subdivision thereof, and that such motor vehicle was being operated with the owner's consent.

(c)(1) It is an offense to fail to provide evidence of financial responsibility pursuant to this section.

(2) Except as provided in subdivision (c)(3), a violation of subdivision (c)(1) is a Class C misdemeanor punishable only by a fine of not more than one hundred dollars (\$100).

(3)(A) A violation of subdivision (c)(1) is a Class A misdemeanor, if a person is not in compliance with the financial responsibility requirements of this chapter at the time of an accident resulting in bodily injury or death and such person was at fault for the accident.

(B) For purposes of subdivision (c)(3)(A), a person is at fault for an accident if the person acted with criminal negligence, as defined in § 39-11-106, in the operation of such person's motor vehicle.

(d) The fines imposed by this section shall be in addition to any other fines imposed by this title for any other violation under this title.

(e)(1) On or before the court date, the person so charged may submit evidence of financial responsibility at the time of the violation. If it is the person's first violation of this section and the court is satisfied that the financial responsibility was in effect at the time of the violation, the charge of failure to provide evidence of financial responsibility shall be dismissed. Upon the person's second or subsequent violation of this section, if the court is satisfied that the financial responsibility was in effect at the time of the violation, the charge of failure to provide evidence of financial responsibility may be dismissed. Any charge that is dismissed pursuant to this subsection (e) shall be dismissed without costs to the defendant and no litigation tax shall be due or collected, notwithstanding any law to the contrary.

(2) A person who did not have financial responsibility that was in effect at the time of being charged with a violation of subsection (c) shall not have that person's violation of subsection (c) dismissed.

(f)(1) Notwithstanding any law to the contrary, in any county having a population in excess of seven hundred fifty thousand (750,000), according to the 2000 federal census or any subsequent federal census, police service technicians are authorized to issue traffic citations in lieu of arrest pursuant to § 55-10-207.

(2) For the purposes of subdivision (f)(1) only, "police service technician" means a person appointed by the director of police services, who responds to requests for service at accident locations and obtains information, investigates accidents and provides other services to assist the police unit, fire unit, ambulance, emergency rescue and towing service.

(g) For purposes of this section, acceptable electronic formats include display of electronic images on a cellular phone or any other type of portable electronic device.

(h) If a person displays the evidence in an electronic format pursuant to this

section, the person is not consenting for law enforcement to access any other contents of the electronic device.

**55-17-111. Application for license — Contents — Bond — Report of changes.**

(a) The commission shall prescribe and provide forms to be used for applications for licenses and for the renewals thereof to be issued under the terms and provisions of this part, and require all applicants and their enfranchised manufacturers, as a condition precedent to the issuance of a license, to provide information touching on and concerning the applicant's character, honesty, integrity, reputation and business relationships and ability as the commission may deem necessary; provided, that every application for a new dealer's license shall contain, in addition to any information that the commission may require, a statement to the following facts:

(1) The name and residence address of the applicant and the trade name, if any, under which the applicant intends to conduct business;

(A) If the applicant is a co-partnership, the name and residence address of each member thereof, whether a limited or general partner, and the name under which the partnership business is to be conducted;

(B) If the applicant is a corporation, the name of the corporation and the name and address of each of its principal officers, directors and all persons owning more than five percent (5%) of outstanding shares of stock issued by the corporation;

(2) A complete description, including the city, town, or village with the street and number, if any, of the permanent, established place of business and other and additional place or places of business as shall be operated and maintained by the applicant in conjunction with the permanent, established place of business;

(3) A financial statement prepared in accordance with generally accepted accounting principles by a certified public accountant or public accountant dated not earlier than twelve (12) months prior to the date of the application and copies of the most current financial information furnished to the manufacturer, distributor or their representatives under the terms of any franchise agreements;

(4) The trade name or trade names or line-make or line-makes of the new motor vehicle or vehicles that the applicant is or has been franchised to sell or exchange and the name or names and address of any manufacturer or distributor who has enfranchised the applicant;

(5) Whether the applicant proposes to sell new or used motor vehicles or both;

(6) Evidence that the motor vehicle dealer applicant is the holder of a current business tax license indicating that the applicant's business is that of a motor vehicle dealer;

(7) A duly executed service agreement on forms provided by the commission with a factory authorized service or repair garage within a reasonable distance from the applicant's established place of business, if the motor vehicle dealer applicant does not have facilities at the dealer's established place of business to service or repair motor vehicles; and

(8) A statement that the applicant is or applicants are or intend to be primarily engaged in business as a motor vehicle dealer and that this activity constitutes or will constitute the principal business of the applicant

or applicants.

(b) All applications for licenses required to be obtained under this chapter shall be verified by oath or affirmation of the applicant or applicants.

(c) All applications shall be accompanied by the payment of the fee prescribed by § 55-17-112. In the event that any application is denied or the license applied for is not issued, seventy-five percent (75%) of the license fee shall be refunded to the applicant or applicants.

(d) In addition to the requirements enumerated above, each automobile auction or branch thereof must submit with its application a corporate surety bond in the amount of fifty thousand dollars (\$50,000) on forms provided by the commission. Every bond shall provide for suit thereon by any person, including the state, who has a cause of action under this chapter. Every bond shall also provide that no suit may be maintained to enforce any liability on the bond unless brought within two (2) years after the event giving rise to the cause of action.

(e) Any change of address, ownership, employment, trade name or line-make of motor vehicle a dealer is franchised to handle must be reported to the commission within thirty (30) days from the date of the change. A motor vehicle dealer will notify the commission of the termination of a salesperson's employment by returning the salesperson's license.

(f) When a motor vehicle salesperson desires to change employment from one dealer to another, that salesperson must submit such person's license to the commission for endorsement of change of employer and may become a salesperson at that person's new place of employment upon submission of the license for endorsement of change of location and payment of any fees due.

(g)(1) Each application for a license or renewal of a license of a motor vehicle dealer shall be accompanied by evidence satisfactory to the commission that the dealer has a surety bond in the amount of at least fifty thousand dollars (\$50,000) in force. A letter of credit shall not be satisfactory evidence of a surety bond in the required amount.

(2)(A) The bond is for the benefit of any person who suffers loss because of either:

(i) Nonpayment by the dealer of a retail customer's prepaid title, registration or other related fees or taxes; or

(ii) The dealer's failure to deliver in conjunction with the sale of a vehicle a valid vehicle title certificate free and clear of any prior owner's interests and all liens except a lien created by or expressly assumed in writing by the buyer of the vehicle.

(B) The aggregate liability of the surety to all persons shall in no event exceed the amount of this bond.

(3) In lieu of a corporate surety on the bond required by subdivision (g)(1), the commission may allow the dealer to secure the bond by depositing collateral in the form of a certificate of deposit, as accepted and authorized by the banking laws of this state, that has a face value equal to the amount of the bond. The collateral may be deposited with or executed through any authorized state depository designated by the commission. Interest on any deposited certificate of deposit shall be payable to the dealer who has deposited it as collateral, or to a person as the dealer or the certificate may direct.

(4) No license so issued shall be transferable, and a separate license shall be required for each separate place of business and shall be prominently displayed in the place of business operated by the person to whom the license

is issued.

(5) Any surety is required to provide sixty (60) days' notice of cancellation of the bond or certificate of deposit or letter of credit to the commission.

(h)(1) All applications for issuance or renewal of a motor vehicle dealer license shall contain an attestation that the applicant will comply with each of the following requirements:

(A) The applicant shall maintain the surety bond required by subsections (d) and (g), as applicable, in full force and effect during all times that the license is active; and

(B) The applicant shall notify the commission upon a change in ownership or location of the dealership as required by § 55-17-113.

(2) Additionally, all applications for issuance or renewal of a motor vehicle dealer license shall contain the following statement, immediately following the attestation required by subdivision (h)(1):

**FAILURE TO MAINTAIN A SURETY BOND AS REQUIRED BY T.C.A. § 55-17-111, OR NOTIFY THE MOTOR VEHICLE COMMISSION OF A CHANGE IN THE OWNERSHIP OR LOCATION OF THE DEALERSHIP AS REQUIRED BY T.C.A. § 55-17-113, MAY RESULT IN THE ASSESSMENT OF A CIVIL PENALTY AND/OR SUSPENSION OR REVOCATION OF THE MOTOR VEHICLE DEALER LICENSE.**

**55-17-114. Grounds for denial, suspension, or revocation of license.**

(a)(1) The commission may deny any application for a license or revoke or suspend any license after it has been issued upon finding that:

(A) The applicant or license holder was previously the holder of a license issued under this part, which license was revoked for cause and never reissued by the commission, or which license was suspended for cause and the terms of suspension have not been fulfilled;

(B) The applicant or license holder was previously a partner, stockholder, director or officer controlling or managing a partnership or corporation whose license issued under this part was revoked for cause and never reissued or was suspended for cause and the terms of the suspension have not been terminated;

(C) The licensee or applicant has been convicted of a crime of moral turpitude and fewer than five (5) years have passed since the licensee or applicant has completed serving the licensee's or applicant's sentence, including parole or probation, whichever is later;

(D) The applicant or license holder has filed an application for a license that as of its effective date was incomplete in any material respect or contained any statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(E) The applicant or license holder has willfully and continually failed to pay the proper application or license fee;

(F) The applicant or license holder has practiced fraud in the conduct of business; or

(G)(i)(a) The license holder has failed to return to a customer any parts that were removed from the motor vehicle and replaced during the process of repair if the customer, at the time repair work was authorized, requested return of the parts; provided, that any part retained by the license holder as part of a trade-in agreement or core

charge agreement for a reconditioned part need not be returned to the customer unless the customer agrees to pay the license holder the additional core charge or other trade-in fee; and provided further, that any part required to be returned to a manufacturer or distributor under a warranty agreement or any part required by any federal or state statute, rule or regulation or local ordinance to be disposed of by the license holder need not be returned to the customer; or

(b) The license holder has failed to permit inspection of any parts retained by the license holder if the customer, at the time repair work was authorized, expressed the customer's desire to inspect the parts; provided, that if, after inspection, the customer requests return of the parts, the restrictions set forth in subdivision (a)(1)(G)(i)(a) shall apply;

(ii)(a) The license holder has failed to post in a prominent location notice of this subdivision (a)(1)(G); or

(b) The license holder has failed to print on the repair contract notice of this subdivision (a)(1)(G); or

(iii) The license holder need not retain any parts not returned to the customer after the motor vehicle has been returned to the customer.

(2) The commission shall promulgate a rule to provide that consumer information regarding chapter 24 of this title will be made available to their customers.

(b)(1) In addition to the grounds contained in subsection (a), the commission may deny an application for a license or revoke or suspend the license of a motor vehicle dealer or salesperson who:

(A) Has required the purchaser of a motor vehicle as a condition of sale and delivery thereof to also purchase special features, appliances, accessories or equipment not desired or requested by the purchaser, unless the features, appliances, accessories or equipment are the type that are ordinarily installed on the vehicle by the manufacturer or distributor when the vehicle is received or acquired by the dealer;

(B) Has represented or sold as a new or unused motor vehicle any vehicle that has been operated for demonstration purposes or that is otherwise a used motor vehicle;

(C) Has sold or offered for sale as a new or unused motor vehicle any motor vehicle for which the dealer or salesperson cannot secure for the purchaser of the motor vehicle such new car warranty as may be extended by the manufacturer of the vehicle to purchasers of one (1) of its new vehicles, unless the fact that the vehicle is being sold without a manufacturer's warranty is communicated to the purchaser and disclosed prominently in writing on the bill of sale;

(D) Has no established place of business that is used or will be used primarily for the purpose of selling, buying, displaying, repairing or servicing motor vehicles;

(E) Resorts to or uses false or misleading representations in connection with that person's business as a motor vehicle dealer or salesperson; provided, that dealers are specifically authorized to charge a document preparation fee, processing fee or servicing fee in addition to the sales price of the motor vehicle and these fees shall not be deemed to be a false or misleading representation made in connection with the sale of a motor vehicle, nor a violation of title 47, chapter 18, part 1; and provided, further,

that the amount of these fees is separately stated and clearly and conspicuously disclosed on the face of the sales contract or buyer's invoice prior to the buyer's execution thereof. For purposes of this subdivision (b)(1)(E), the disclosure shall be deemed to be "conspicuous" if it is listed on the contract or invoice in the same place and manner and in type face no smaller or less obvious than the other type face used therein with respect to other charges listed, and shall be deemed to be "clear" if it states that the charge is a fee for "document preparation", "processing" or "servicing" or language or abbreviations to the same or a similar effect. The authorization provided by this subdivision (b)(1)(E) shall not apply if the dealer represents to the buyer that the fee is required by or will be paid to any governmental agency or entity;

(F) Gives false or fictitious names or addresses for the purpose of registering the sale of a motor vehicle or who makes application for the registration of a motor vehicle in the name of any person other than the true owner;

(G) Employs any person who has not been licensed as a salesperson pursuant to this part;

(H) Fails to reasonably supervise agents, salespersons or employees;

(I) Uses or permits the use of special license plates assigned to that person for any purpose other than those permitted by law;

(J) Disconnects, turns back or resets the odometer of any motor vehicle in violation of state or federal law, except as provided for in § 39-14-132(b);

(K) Commits any act or practice involving the purchase, sale, repair or servicing of a motor vehicle or the parts or accessories of a motor vehicle, that, in the opinion of the commission, is false, fraudulent or deceptive;

(L) Increases the price of a new motor vehicle to a retail customer after the dealer has accepted an order of purchase or a contract from a buyer, except that a trade-in vehicle may be reappraised if it subsequently suffered damage, or parts or accessories have been removed. Price differences applicable to new models or a new series of motor vehicles at the time of the introduction of new models or new series shall not be considered a price increase or price decrease;

(M) Sold, or offered for sale, a recreational vehicle without the recreational vehicle being manufactured in accordance with Standard for Recreational Vehicles (ANSI 119.2/NFPA 1192 — 2002);

(N) Possesses an executed certificate of title without the name of the transferee appearing on the certificate;

(O) Issues more temporary plates than allowed by law or fails to maintain a record of the issuance of temporary plates;

(P) Prior to a motor vehicle being subject to a public automobile auction, the public automobile auctioneer shall verify that the motor vehicle has a clean and unencumbered title, by obtaining a valid motor vehicle title history from the department of revenue or if the motor vehicle is registered in a state other than this state, the appropriate titling agency in the other state;

(Q) All public automobile auctions must take place at the established place of business listed on the motor vehicle dealer license;

(R) The public automobile auction shall not sell new or unused motor vehicles or vehicles with a manufacturer's statement of origin; or

(S) The public automobile auctioneer shall take possession of and retain title to each motor vehicle offered for sale at the auction. If the sale is finalized on a motor vehicle, the owner of the vehicle shall sign the title over to the public automobile auctioneer who shall then sign the title over to and deliver the title to the buyer on the date of the sale. If a sale of the vehicle is not made, then the unsigned title shall be returned to the owner of the vehicle who offered the vehicle for sale at the auction. At all times, the public automobile auction shall be deemed the seller of the motor vehicle with the same duties and responsibilities as other licensed motor vehicle dealers.

(2) Whenever any licensee pleads guilty or is convicted of the offense of odometer tampering or any other criminal offense involving moral turpitude, the licensee must within sixty (60) days so notify the commission and must provide the commission with certified copies of the conviction. The licensee's license shall automatically be revoked sixty (60) days after the guilty plea or conviction unless, during the sixty-day period, the licensee makes a written request to the commission for a hearing. Following the hearing, the commission in its discretion may impose upon the licensee any sanction permitted by this part.

(3) A motor vehicle dealer shall pay off the agreed upon indebtedness on the trade-in vehicle within thirty (30) days after the dealer has received actual payment on the financing contract for the new motor vehicle purchase.

(4)(A) Notwithstanding any law to the contrary, the commission may revoke or suspend the license of or levy a civil penalty against any motor vehicle dealer who, in a motor vehicle transaction that is conditioned upon final funding to the dealer by a third party financial institution, fails to:

(i) Provide in writing to the customer the conditional delivery agreement set forth in subdivision (b)(4)(D);

(ii) Retain possession of any vehicle used by the consumer as consideration, commonly known as a trade-in vehicle, until the dealer has received funding from the financial institution;

(iii) Allow the consumer to void the motor vehicle transaction if any of the terms of the transaction change after the consumer has approved and accepted the terms; or

(iv) Pay off the agreed upon indebtedness on the trade-in vehicle within thirty (30) days after the dealer has received funding from the financial institution on the financing contract for the new purchase.

(B) As used in this subdivision (b)(4), "funding" means actual payment to the dealer by the financial institution purchasing the financing contract or lease.

(C) Compliance with subdivisions (b)(4)(A) and (B) may not be waived by any consumer.

(D) The form of the conditional delivery agreement shall be as follows:

**CONDITIONAL DELIVERY AGREEMENT**

**THIS TRANSACTION IS NOT FINAL**

YEAR: \_\_\_\_\_ MAKE: \_\_\_\_\_ MODEL: \_\_\_\_\_ VIN#: \_\_\_\_\_

I understand that I am taking possession of this vehicle prior to approval from a financial institution and that this transaction is conditioned upon final approval by a lender and funding to the Dealer. I further understand

that by taking possession of this vehicle I have agreed to its purchase at the price agreed upon with the Dealer as shown on the financing contract.

I give the Dealer authorization to investigate my credit and place the financing contract with the lender of their choosing. I understand that if the Dealer is unable to obtain final funding of the financing contract within \_\_\_\_\_(\_\_\_\_) business days, or if I am unable to obtain financing of my own within 24 hours after notification from the Dealer that the financing contract has been denied, I will be required to return the vehicle to the Dealer. I agree that if I do not promptly return the vehicle that the Dealer may repossess the vehicle from me wherever it may be found. If a lender requires additional conditions from me before accepting the contract, I will use my best efforts to immediately comply with such conditions. If I do not meet or agree to accept any additional conditions or terms, this purchase and the financing contract will be void.

I agree that the Dealer has the right to rely on any representation made by me in connection with the purchase contract and the financing contract, including information I provided on the credit application. In the event any representations are incorrect or false, the Dealer has the right to cancel the purchase and the financing contract immediately.

I understand that I am liable for any personal injuries and physical damage that might occur to the vehicle or to other persons or property due to my operation of the vehicle, including any fines charged against the vehicle, even in the event that I am required to return the vehicle. I agree to indemnify the Dealer against such losses. In addition, I have provided evidence of collision/comprehensive and liability insurance which will cover any damage which might occur to the vehicle or other property or persons during my operation of the vehicle. Until this is final, I am responsible for any payments due or to come due on my trade-in vehicle.

Dealer: (Type in or stamp dealer name)

\_\_\_\_\_  
Customer(s)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

(c) In addition to the grounds contained in subsection (a), the commission may deny an application for a license, or revoke or suspend the license of a manufacturer, distributor, distributor branch, factory branch or officer, agent or other representative thereof who has:

(1) Refused to deliver to any motor vehicle dealer having a franchise or contractual arrangement for the retail sale of new and unused motor vehicles sold or distributed by the manufacturer, distributor, distributor branch or factory branch any motor vehicle publicly advertised for immediate delivery within sixty (60) days after the dealer's order has been received;

(2) Sold or offered for sale to a franchised dealer any supplies, material, or other things of value at the time of and as a part of the negotiations for a new or renewal franchise or contract renewing or extending for an additional period of time the dealer's franchise agreement, regardless of whether the sale or offer of sale shall be made a prerequisite to the renewal of a franchise agreement or not;

(3) Unfairly or without due regard to the equities or without just provocation cancelled or failed to renew the franchise or selling agreement of a motor vehicle dealer;

(4) Entered into a franchise agreement with a dealer who does not have, or is not able to provide, proper facilities to provide the services to the purchasers of new motor vehicles that are guaranteed by the new car warranties issued by the manufacturer;

(5) Prevented or required, or attempted to prevent or require, by contract or otherwise, any change in the capital structure of the dealership or the means by or through which the dealer finances the operation of the dealership; provided, that the dealer at all times meets any reasonable capital standards agreed to by the dealer and the manufacturer or distributor; and provided further, that no change in capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor;

(6) Prevented or required, or has attempted to prevent or require, a dealer to change the executive management of the dealership, other than the principal dealership operator or operators, if the franchise was granted to the dealer in reliance upon the personal qualifications of the person or persons;

(7) Prevented or required, or has attempted to prevent or require, by contract or otherwise, any dealer, or any officer, partner, or stockholder of any dealership, the sale or transfer of any part of the interest of any of them to any other person or persons. No dealer, officer, partner, or stockholder, however, has the right to sell, transfer, or assign the franchise, or any right thereunder, without the consent of the manufacturer or distributor, except that the consent shall not be unreasonably withheld;

(8) Prevented, or has attempted to prevent, a dealer from receiving fair and reasonable compensation for the value of the franchise business. There shall be no transfer or assignment of the dealer's franchise without the consent of the manufacturer or distributor, which consent shall not be unreasonably withheld;

(9) Obtained money, goods, service, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and such other person, other than for compensation for services rendered, unless the benefit is promptly accounted for, and transmitted to the dealer;

(10) Required a dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel that would relieve any person from liability to be imposed by this part, or has required any controversy between a dealer and manufacturer, distributor, or its representative, to be referred to any person other than the commission if the referral would be binding on the dealer. This subdivision (c)(10) shall not, however, prohibit arbitration before an independent arbitrator or the commencement of any legal action;

(11) Increased prices of motor vehicles that the dealer has ordered but not delivered for private retail customers prior to the dealer's receipt of the written official price increase notification. A sales contract by a private retail customer shall constitute evidence of each such order. In the event of manufacturer price reductions, the amount of any reduction received by a dealer shall be passed on to the private retail customer by the dealer, if the retail price was negotiated on the basis of the previous higher price to the

dealer. Price reduction shall apply to all vehicles in the dealer's inventory that are subject to the price reduction. Price differences applicable to new models or a new series of motor vehicles at the time of the introduction of new models or new series shall not be considered a price increase or price decrease. Price changes caused by either:

(A) The addition to a motor vehicle of required or optional equipment pursuant to state or federal law; or

(B) Revaluation of the United States dollar in the case of foreign-make vehicles;

shall not be subject to this subsection (c);

(12) Failed to pay a dealer, within a reasonable time following receipt of a valid claim by a dealer thereof, any payment agreed to be made by the manufacturer or distributor to the dealer by reason of the fact that a new vehicle of a prior year model is in the dealer's inventory at the time of introduction of new model vehicles;

(13) Denied or attempted to deny the surviving spouse or heirs designated by a deceased owner of a dealership, the opportunity to participate in the ownership of the dealership or a successor dealership under a valid franchise after the death of the owner, unless there are reasonable grounds for the denial;

(14) Offered any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line-make to be sold to the state or any political subdivision thereof or to any other person without making the same offer to all other dealers in the same line-make within the state;

(15) Employed any person as a representative who has not been licensed pursuant to this part;

(16) Denied any dealer the right of free association with any other dealer for any lawful purpose;

(17) Competed with a dealer in the same line-make operating under an agreement or franchise from a manufacturer or distributor in the relevant market area. A manufacturer or distributor shall not, however, be deemed to be competing when operating a dealership either temporarily for a reasonable period of time, or when operating a bona fide retail operation that is for sale to any qualified independent person at a fair and reasonable price, or when there is a bona fide relationship in which an independent person has made a sufficient investment subject to loss in the dealership and can reasonably expect to acquire full ownership of subject dealership on reasonable terms and conditions. An exclusive motor truck manufacturer, when selling vehicles having a gross vehicle weight over six thousand (6,000) pounds, shall not be deemed to be competing when operating a dealership that sells motor trucks at retail if, for at least six (6) years prior to January 1, 1977, the manufacturer has continuously so operated the dealership;

(18) Unfairly discriminated among its franchisees with the respect to warranty reimbursement or authority granted its franchisees to make warranty adjustments with retail customers;

(19) Sold motor vehicles to persons not licensed under this part as motor vehicle dealers, except as provided in § 55-17-102(2)(C);

(20) Granted a competitive franchise in the relevant market area previously granted to another motor vehicle dealer. "Relevant market area," as used in this subdivision (c)(20), means that area as described or defined in

the then existing franchise or dealership of any dealer or dealers; provided, that if the manufacturer wishes to grant a franchise to an independent dealer, or to grant an interest in a new dealership to an independent person in a bona fide relationship in which the person has made a sufficient investment subject to loss in the dealership, and can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions, then the manufacturer shall give written notice to the existing dealer or dealers in the area, and the matter shall be submitted to the commission for final and binding action under the principles herein prescribed for a determination of the relevant market area, the adequacy of the servicing of the area by the existing dealer or dealers and the propriety of the granting of additional dealerships. The complaint, whether filed by an existing dealer or upon motion of the commission, shall be filed within thirty (30) days of the receipt by affected dealers of notice as required herein, and if no protests are filed, the manufacturer may proceed to grant the additional franchise;

(21) Committed any other act prejudicial to the dealer by threatening to cancel the franchise or any contractual agreement existing between the dealer and the manufacturer, manufacturer branch, distributor, or distributor branch. Written notice in good faith to any dealer of the dealer's violations of any terms or provisions of the franchise or contractual agreement shall not constitute a violation of this subsection (c);

(22) Coerced or attempted to coerce any motor vehicle dealer to accept delivery of any motor vehicle or motor vehicles, appliances, equipment, parts, tools or accessories therefor, or any other commodity or commodities that have not been voluntarily ordered by the dealer;

(23) Coerced or attempted to coerce any motor vehicle dealer to contribute or pay money or anything of value into any cooperative or other advertising program or fund;

(24) Coerced or attempted to coerce any motor vehicle dealer to engage in any business pursuit that is not directly related to the sale of motor vehicles as defined by the commission;

(25) Forced, coerced or otherwise required a franchisee to use reconditioned parts in warranty repairs without disclosing such to the owner or lessee; or

(26) Sold, or offered for sale, a recreational vehicle without the recreational vehicle being manufactured in accordance with the Standard for Recreational Vehicles (ANSI 119.2/NFPA 1192 — 2002).

(d) In addition to the grounds contained in subsection (a), the commission may deny an application for a license or revoke or suspend the license of an automobile auction or agent thereof who has:

(1) If acting as an automobile auction as defined in § 55-17-102(2)(A), willfully permitted any person or persons to buy, sell, exchange or in any other manner participate in automobile auction sales without first determining that the person or persons are duly licensed motor vehicle dealers or duly authorized agents licensed either under this part or under a similar act of another state;

(2) Failed to provide and make available for inspection to the commission or its agents, all books, records and other memoranda of all transactions, transfers or sales of motor vehicles that take place during the course of business;

(3) Engaged in the business of an automobile auction or agent without

posting the bond required by law; or

(4) If acting as an automobile auction as defined in § 55-17-102(2)(B), sold motor vehicles on consignment without showing on the title that the motor vehicle was purchased directly from the auction and not from a third party.

(e) The commission may revoke or suspend any license that the commission has issued upon finding that the licensee has not maintained any of the requirements for issuance of such license.

**55-17-123. Exception for certain transactions.**

(a) Notwithstanding § 55-17-109 or § 55-17-114, the transactions authorized by this section are permitted.

(b) As used in this section:

(1) "Line-make" means motor vehicles of the same trade name for which separate dealership franchises are granted;

(2) "Producer" means any person, including related business entities, that manufactures or assembles new and unused motor vehicles in this state, and qualifies for the tax credit provided in § 67-4-2109(b)(2)(B)(i) on June 17, 2005; and

(3) "Related business entity" means any person that has more than thirty-five percent (35%) direct or indirect ownership interest in a producer on June 17, 2005, or is a one hundred percent (100%) owned subsidiary of a person who owns a one hundred percent (100%) interest in a producer on June 17, 2005.

(c)(1)(A) A producer of motor vehicles may lease no more than four (4) motor vehicles, and provide any maintenance ancillary to the motor vehicles, of the same line-make as the producer or any related business entity produces, to each eligible employee of the producer, under no less than a twelve-month closed-end lease; provided, that the total number of vehicles so leased to such eligible employees in this state shall not exceed the producer's total number of eligible employees in this state.

(B) For purposes of this section, an "eligible employee" shall include:

(i) Each full-time employee, as defined in § 67-6-394(c), on producer's payroll; and

(ii) Each leased employee, as defined under § 414(n) of the Internal Revenue Code as such section exists as of April 23, 2013, of the producer who works onsite at one of the producer's facilities in this state.

(2) Any motor vehicle that is subject to a lease permitted under this subsection (c) shall be purchased by the producer from any dealer of the same line-make as the leased motor vehicle.

(d)(1) At the termination of any lease permitted under subsection (c), the motor vehicle may be held by the producer for no longer than ten (10) business days and shall be sold through a dealer that sells new and unused motor vehicles of the same line-make, to an eligible employee of the producer. Each eligible employee shall be entitled to purchase no more than one (1) motor vehicle per twelve-month period and must title the vehicle in the employee's name and shall retain the motor vehicle for no less than one hundred eighty (180) days from date of purchase.

(2) Thereafter, those motor vehicles not purchased shall be sold at an auction limited to any franchised dealer that sells new or unused motor vehicles of the same line-make as those being auctioned.

**55-25-107. Disclosure for certain purposes.**

(a) The department, or any officer, employee, or contractor of the department, shall not knowingly disclose or otherwise make available to any person or entity:

(1) Personal information about any person obtained by the department in connection with a motor vehicle record, except as provided in this section; or

(2) Highly restricted personal information about any person obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom that information applies, except uses permitted in subdivisions (b)(1), (b)(4), (b)(6), and (b)(9); provided, however, that this subdivision (a)(2) shall not in any way affect the administration of organ donation initiatives in this state.

(b) Personal information referred to in subsection (a) shall be disclosed for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of nonowner records from the original owner records of motor vehicle manufacturers to carry out the purposes of Titles I and IV of the federal Anti-Car Theft Act of 1992, compiled in 15 U.S.C. § 2021 et seq., the federal Automobile Information Disclosure Act, compiled in 15 U.S.C. § 1231 et seq., the federal Clean Air Act of 1992, compiled in 42 U.S.C. § 7401 et seq., and 49 U.S.C. § 30101 et seq., 49 U.S.C. § 30501 et seq., 49 U.S.C. § 32101 et seq., 49 U.S.C. § 33101, et seq., and, subject to subdivision (a)(2), may be disclosed for use as follows:

(1) By any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a federal, state or local agency in carrying out its functions;

(2) In connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring of motor vehicles, motor vehicle parts and dealers, motor vehicle market research activities, including survey research, and removal of nonowner records from the original owner records of motor vehicle manufacturers;

(3) In the normal course of business by a legitimate business or its agents, employees, or contractors, but only:

(A) To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(B) If the information so submitted is not correct or is no longer correct, to obtain the correct information, but only for purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against the individual;

(4) In connection with any civil, criminal, administrative, or arbitral proceeding in any federal, state, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state or local court;

(5) In research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals;

(6) By any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims

investigation activities, antifraud activities, rating or underwriting;

(7) In providing notice to the owners of towed or impounded vehicles;

(8) By any licensed private investigative agency or licensed security service for any purpose permitted under this subsection (b);

(9) By an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver license that is required under 49 U.S.C. § 31301 et seq.;

(10) In connection with the operation of private toll transportation facilities;

(11) For any other use in response to requests for individual motor vehicle records if the state has obtained the express consent of the person to whom the personal information pertains;

(12) In bulk distribution for surveys, marketing or solicitations if the state has obtained the express consent of the person to whom the personal information pertains;

(13) By any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains; and

(14) For any other use specifically authorized under the law of this state, if that use is related to the operation of a motor vehicle or public safety.

(c) An authorized recipient of personal information, except a recipient under subdivision (b)(11) or (b)(12), may resell or redisclose the information only for use permitted under subsection (b), but not for uses under subdivision (b)(11) or (b)(12). An authorized recipient under subdivision (b)(11) may resell or redisclose personal information for any purpose. An authorized recipient under subdivision (b)(12) may resell or redisclose personal information pursuant to subdivision (b)(12). Any authorized recipient, except a recipient under subdivision (b)(11), that resells or rediscloses personal information covered by this section shall keep for a period of five (5) years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and shall make those records available to the department of revenue or the department of safety upon request.

(d) The department of revenue or the department of safety may establish and carry out procedures under which the department or its agents, upon receiving a request for personal information that does not fall within one (1) of the exceptions in subsection (b), may mail a copy of the request to the individual about whom the information was requested, informing that individual of the request, together with a statement to the effect that the information shall not be released unless the individual waives the individual's right to privacy under this section.

(e) Under no circumstances may the department of revenue or the department of safety condition or burden in any way the issuance of an individual's motor vehicle record to obtain express consent for the disclosure of that record. Nothing in this subsection (e) shall be construed to prohibit the department of revenue or the department of safety from charging an administrative fee for issuance of a motor vehicle record.

(f) Motor vehicle records, personal information, or highly restricted personal information shall be disclosed to any person by the department of revenue or the department of safety upon proof of the identity of the person requesting the record or information and representation by that person that the use of the personal information shall be strictly limited to one (1) or more of the permitted uses described in this section.

(g) Before issuing motor vehicle records, personal information, or highly

restricted personal information, the department of revenue or the department of safety may require any person, federal, state, or local governmental agency requesting that information, or each of the requesting entity's contractors, officers or individuals in the employ of that person or governmental agency that will have access to the information, to execute a confidentiality agreement stating that the recipient, or the recipient's contractor, officer or employee, as the case may be, shall comply with the confidentiality provisions of this section and shall limit the use of the information to those uses specifically permissible under this section.

(h) No person, governmental agency, or contractor, officer or employee thereof who receives information under this section shall disclose that information to any person other than the person to whom it relates, except as otherwise may be authorized by this section or other applicable law.

**55-50-322. Examination of applicants.**

(a)(1)(A) The department shall examine every applicant for a driver license, intermediate driver license, learner permit, temporary driver license, temporary learner permit, and temporary intermediate driver license, except as otherwise provided in this part. This examination shall include a test of the applicant's eyesight to be administered according to standards set by the department, the applicant's ability to read and/or understand highway signs regulating, warning and directing traffic, the applicant's knowledge of the traffic laws of this state, and shall include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle or combination of vehicles of the type covered by the license classification or endorsement that the applicant is seeking. The examination may also include further physical and mental examinations the department finds necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways.

(B) All such examinations given to persons under eighteen (18) years of age shall be written, with the exception of examination of the applicant's eyesight including, but not limited to, night vision performance. However, this restriction shall not apply to any person who, prior to January 1, 1990, obtained a valid license other than by written examination, or to any person with a medical condition, certified by a physician, which would render a written examination impractical, or to any handicapped child, including the learning disabled, certified by a specialist as unable to be tested by written examination.

(2) In addition, all examinations administered to applicants for a driver license or intermediate driver license shall include questions concerning drugs and alcohol, the effects of those substances on a person's ability to operate a vehicle and the applicable Tennessee laws pertaining to operating a vehicle while under the influence of alcohol or drugs, and the alcohol and drug related questions shall constitute one-fourth ( $\frac{1}{4}$ ) of the written examination. The department shall ensure the driver manual used to prepare applicants for the license examination includes sufficient information concerning drugs and alcohol to enable a reasonably diligent applicant to correctly answer the additional questions.

(b)(1) The department may waive the required knowledge and skills tests upon application for a Tennessee driver license by a nonresident who

establishes residency in this state. The new resident must surrender a driver license or submit a certified report from the former state of residence. Either the license or the report shall verify that the license is not subject to cancellation, suspension or revocation and that the license is valid, or has not been expired in excess of six (6) months.

(2)(A) As used in this subdivision (b)(2), “valid military commercial driver license” means any commercial driver license that is recognized by any active or reserve component of any branch of the United States armed forces as currently being valid or as having been valid at the time of an applicant’s separation or discharge from the armed forces that occurred within the two-year period immediately preceding the date of application for a commercial driver license.

(B) The department shall waive the required skills test upon initial application for a commercial driver license by any applicant who, at the time of initial application, has been issued, or is in immediate possession of, a valid military commercial driver license and who certifies on the application that, during the two-year period immediately preceding the date of application, the applicant:

- (i) Has not had more than one (1) driver license, except for a valid military commercial driver license;
- (ii) Has not had any driver license suspended, revoked, or cancelled in this state or any other state;
- (iii) Has not had any convictions while operating any type of motor vehicle for the disqualifying offenses contained in 49 CFR 383.51(b), and has not lost the privilege to operate a commercial motor vehicle, or been disqualified from operating a commercial motor vehicle, in this state or any other state;
- (iv) Has not had more than one (1) conviction while operating any type of motor vehicle for serious traffic violations as defined in § 55-50-102 or contained in 49 CFR 383.51(c);
- (v) Has not had any conviction for a violation of any military or state law or local ordinance relating to motor vehicle traffic control, in this or any other state, other than a parking violation, arising in connection with any traffic accident; and
- (vi) Has no record of an accident in which the applicant was at fault.

(C) The applicant shall also certify on the application, and submit supporting documentation as required in subdivision (b)(2)(D), that the applicant:

- (i) Is regularly employed or was regularly employed within the ninety-day period immediately preceding application in a position in the United States armed forces requiring operation of a commercial motor vehicle that is representative of the license class and endorsement for which the applicant is applying;
- (ii) Is exempted or was exempted from the commercial driver license requirements in 49 CFR 383.3(c); and
- (iii) Is operating or was operating a commercial motor vehicle in the United States armed forces that is representative of the license class and endorsement for which the person is applying, for at least the two (2) years immediately preceding separation or discharge from the armed forces, in the case of an honorably discharged member, or for at least the two (2) years immediately preceding application, in the case of a

member in active duty.

(D) The application shall be accompanied by the following documentation establishing the applicant's military occupational specialty and driving experience as indicated in subdivision (b)(2)(C):

(i) A notarized affidavit signed by a commanding officer, if the applicant is on active duty; or

(ii) If the applicant is honorably discharged from military service:

(a) A copy of the applicant's certificate of release of discharge from active duty, department of defense form 214 (DD 214); or

(b) A statement from the appropriate branch of the United States armed forces, certified by the department of veterans affairs.

(E) An applicant who obtains the skills test waiver under this subdivision (b)(2) shall be required to successfully complete any applicable vision and knowledge tests, and pay the appropriate fees, other than the skills testing fee.

(c)(1) The examinations for applicants for commercial driver licenses shall be conducted in compliance with 49 CFR part 383.

(2) The department is permitted to promulgate rules and regulations pertaining to third-party testing for the skills tests required for commercial driver licenses, in accordance with 49 CFR part 383.

(3) The department shall not reject the applicant for a commercial driver license if the examiner believes the condition of the vehicle is unsafe for operation, unless the examiner requests an inspection of the vehicle by a qualified commercial vehicle inspector of the department. This vehicle, and all commercial vehicles inspected by the department, shall be inspected in accordance with the North American Standard Uniform Inspection procedures outlined by the Commercial Vehicle Safety Alliance. A commercial vehicle placed out-of-service for mechanical or safety defects by the qualified inspector shall be placed out-of-service for safety defects as defined in the North American Uniform Out-of-Service Criteria. The applicant shall be given a written report listing all defects by the inspector and informed of necessary repairs to cause the vehicle to be in compliance. The examiner shall not conduct a road test if the commercial vehicle inspector determines that the vehicle does not meet the standards defined in the North American Uniform Out-of-Service Criteria.

(d) All persons who are in the United States armed forces and who are holders of driver licenses in this state may have their licenses renewed upon application to the department upon their return to Tennessee without further examination.

(e) Persons applying for reinstatement of a cancelled, suspended or revoked driver license shall not be required to take an eye test or knowledge and skills tests unless their license has been expired in excess of one (1) renewal cycle as provided in § 55-50-338(a)(3).

(f) An applicant who presents evidence acceptable to the department that the applicant has satisfactorily completed a driver education and training course offered for Class D vehicles by nonpublic schools in categories 1, 2, or 3 as recognized by the state board of education, a public school, a public institution of higher learning, or a commercial driver training school, operating under chapter 19 of this title, shall be deemed to have satisfactorily completed the department's examinations. The department may require the courses to include certain knowledge and skills examinations.

(g) The department may authorize early intervention programs and alcohol

and drug safety DUI schools administered by the department of health to administer the knowledge element of the driver license examination, subject to oversight by the department of safety. A defensive driving program under the oversight of the department of safety may also administer the examinations. An applicant who presents evidence acceptable to the department that the applicant has satisfactorily completed such a knowledge examination shall be deemed to have successfully completed the knowledge element of the driver license examination.

(h) The department of education may incorporate a driver license knowledge examination developed by the department of safety as a part of proficiency tests administered to eighth and tenth grade students pursuant to § 49-6-6001. The driver license knowledge examination shall comply with the requirements of this section. An applicant who presents acceptable evidence to the department of safety that the applicant has satisfactorily completed such a knowledge examination shall be deemed to have successfully completed the knowledge element of the driver license examination.

(i) The commissioner of safety is authorized to promulgate rules and regulations to effectuate the purposes of this section. All rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

#### **55-50-405. Violations — Penalties — Driving under the influence.**

(a)(1) The commissioner shall suspend for at least one (1) year, a commercial motor vehicle operator who is found to have committed a first violation of:

(A) Driving a commercial motor vehicle under the influence of alcohol or a controlled substance, or with a blood alcohol concentration (BAC) of four-hundredths of one percent (0.04 %) or greater;

(B) Leaving the scene of an accident while driving a commercial motor vehicle; or

(C) Operating a commercial motor vehicle in the commission of a felony, except a controlled substance felony as described in subdivision (a)(4);

(2) If the operator commits any of the violations while carrying hazardous materials, the suspension shall be for a period of three (3) years;

(3) The commissioner shall suspend for life, or a period not less than ten (10) years, according to department of transportation regulations, a commercial motor vehicle operator who is found to have committed a second violation of:

(A) Driving a commercial motor vehicle under the influence of alcohol with a BAC of point zero four (.04) or greater, or other controlled substance;

(B) Leaving the scene of an accident while driving a commercial motor vehicle; or

(C) Using a commercial motor vehicle in the commission of a felony;

(4) The commissioner shall suspend for life, a commercial motor vehicle operator who is found to have used a commercial motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to distribute;

(5) The commissioner shall suspend for a period of not less than sixty (60) days each person who in a three-year period has committed two (2) serious traffic violations involving a commercial motor vehicle, and for not less than one hundred twenty (120) days each person who has committed three (3)

serious traffic violations in a three-year period;

(6)(A) Any person violating subdivisions (a)(1), (2), and (3) shall, upon conviction, be punished pursuant to the requirements of §§ 55-10-402 and 55-10-403, except for provision of license suspension, which shall be in accordance with this subsection (a); and

(B) Any person violating subdivision (a)(4) shall, upon conviction, be fined not less than two thousand five hundred dollars (\$2,500), and be imprisoned for not less than ninety (90) days nor more than one (1) year;

(7)(A) The commissioner shall suspend the driver license of a driver who is convicted of violating an out-of-service order while driving a commercial motor vehicle for one hundred eighty (180) days if the driver is convicted of a first violation of an out-of-service order.

(B) The commissioner shall suspend the driver license of a driver who is convicted of violating an out-of-service order while driving a commercial motor vehicle for two (2) years if, during any ten-year period, the driver is convicted of two (2) violations of out-of-service orders in separate incidents.

(C) The commissioner shall suspend the driver license of a driver who is convicted of violating an out-of-service order while driving a commercial motor vehicle for three (3) years if, during any ten-year period, the driver is convicted of three (3) or more violations of out-of-service orders in separate incidents;

(8)(A) The commissioner shall suspend the driver license for a period of one hundred eighty (180) days if a driver is convicted of violating an out-of-service order while driving a commercial motor vehicle while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act, compiled in U.S.C. § 5101 et seq., , or while operating a motor vehicle designed to transport more than fifteen (15) passengers including the driver.

(B) The commissioner shall suspend the driver license of a driver who is convicted of violating an out-of-service order while driving a commercial motor vehicle for a period of three (3) years if the driver is convicted of any subsequent violation of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act, compiled in U.S.C. § 5101 et seq., or while operating a commercial motor vehicle designed to transport more than fifteen (15) passengers, including the driver;

(9) The commissioner shall suspend the driver license of a commercial motor vehicle operator who is convicted of violating a railroad highway grade crossing law or regulation while operating a commercial motor vehicle, for not less than sixty (60) days for a first conviction; not less than one hundred twenty (120) days for a second conviction, if the violation occurred within a three (3) year period from the first violation; and one (1) year for a third conviction, if the violation occurred within three (3) years from the first violation, for the following offenses:

(A) For drivers who are not required to always stop pursuant to § 55-8-147, failing to slow down and check the railroad highway grade crossing to be sure it is clear of an approaching train;

(B) For drivers who are not required to always stop pursuant to § 55-8-147, failing to stop before reaching the railroad highway grade crossing if the tracks are not clear;

- (C) A conviction of § 55-8-147;
- (D) Failure to have sufficient space to drive completely through the railroad highway grade crossing without stopping;
- (E) Failure to obey a traffic control device or the directions of an enforcement official at the railroad highway grade crossing; or
- (F) Failure to negotiate a railroad highway grade crossing because of insufficient undercarriage clearance; and
- (10)(A) A driver who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than two thousand five hundred dollars (\$2,500) for a first conviction and not less than five thousand dollars (\$5,000) for a second or subsequent conviction, in addition to any disqualification or other penalty which may be imposed by state or federal law;
- (B) The civil penalty shall be assessed by the department after receiving notification of the conviction;
- (C) Funds received pursuant to this section shall become expendable receipts of the department.
- (b) Any person violating § 55-50-401 shall, upon conviction, be fined not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000), and be imprisoned for not less than ten (10) days nor more than ninety (90) days.
- (c) Any person violating § 55-50-402 shall, upon conviction, be fined not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500), and imprisoned for not less than two (2) days nor more than thirty (30) days.
- (d) Any person violating § 55-50-403 shall, upon conviction, be fined not more than five hundred dollars (\$500) and also be subject to civil penalties pursuant to 49 CFR 383.53(b)(2).
- (e) Any person violating § 55-50-404 shall, upon conviction of a first offense, be fined not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000), and be imprisoned for not less than thirty (30) days nor more than ninety (90) days; and upon conviction of a second or subsequent offense, be fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500) and be imprisoned for not less than ninety (90) days nor more than one (1) year.
- (f) Notwithstanding any other provision of this part to the contrary, any person who violates § 55-50-404 due to failure to observe the one hundred fifty-mile restriction imposed by § 55-50-102(12)(B)(i) shall be punished only by a fine of ten dollars (\$10.00). No court costs or litigation taxes may be collected or assessed on the violations.
- (g) Notwithstanding any other provision in this title, the privilege of operating a commercial motor vehicle shall be subject to the provisions of 49 CFR parts 383 and 384 relative to the disqualification of drivers.
- (h) Any person charged with driving a commercial motor vehicle without a commercial driver license in the driver's possession, may, on or before the court date, submit evidence of compliance at the time of the violation. If the court is satisfied that compliance was in effect at the time of the violation, the charge shall be dismissed without cost to the defendant and no litigation tax shall be due or collected, notwithstanding any provision of law to the contrary.
- (i) Pursuant to 49 CFR 350.341, no provision of law relative to commercial driver licenses, including, but not limited to, physical qualification standards

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and records to be kept by drivers, shall be applicable to drivers of motor vehicles that have a gross vehicle weight rating or gross combination weight rating of twenty-six thousand pounds (26,000 lbs.) or less that are operated in intrastate commerce to transport property, and that do not transport:

- (1) Hazardous materials required to be placarded;
- (2) Sixteen (16) or more persons, including the driver; or
- (3) Passengers for hire.

**55-50-502. Suspension of licenses — Hearings — Period of suspension or revocation — Surrender of license — Restricted license — Operating under license of another jurisdiction prohibited — Appeal.**

(a)(1) The department is authorized to suspend the license of an operator or chauffeur upon a showing by its records or other sufficient evidence that the licensee:

(A) Has committed an offense for which mandatory revocation of license is required upon conviction; provided, that in the event of a conviction resulting from the offense, the time of mandatory revocation shall be counted from the date upon which the driver license was received by the department or the circuit court clerk;

(B) Has contributed as a driver in any accident resulting in the death or personal injury of another or serious property damage;

(C) Has been convicted with a frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways. For purposes of this subdivision (a)(1)(C), no conviction of exceeding the speed limit in a state other than Tennessee shall be considered by the department unless the conviction was for exceeding the lawful speed in the other state by more than five miles per hour (5 mph). This five miles per hour (5 mph) allowance shall not apply in marked school zones;

(D) Is an habitually reckless or negligent driver of a motor vehicle;

(E) Is incompetent to drive a motor vehicle;

(F) Has permitted an unlawful or fraudulent use of the license;

(G) Has committed an offense in another state that if committed in this state would be grounds for suspension or revocation;

(H) Has been finally convicted of any driving offense in any court and has not paid or secured any fine or costs imposed for that offense; provided, however, that, in any county having a population of not less than eight hundred ninety-seven thousand four hundred (897,400) nor more than eight hundred ninety-seven thousand five hundred (897,500), according to the 2000 federal census or any subsequent federal census, prior to the suspension of a license, the local court or court clerk of the jurisdiction shall offer an installment payment plan, and for so long as the licensee complies with the plan, the department may not suspend the license pursuant to this subdivision (a)(1)(H);

(I) Has failed to appear in any court to answer or to satisfy any traffic citation issued for violating any statute regulating traffic. No license shall be suspended pursuant to this subdivision (a)(1)(I) for failure to appear in court on or failure to pay a parking ticket or citation or for a violation of

§ 55-9-603. Any request from the court for suspension under this subdivision (a)(1)(I) must be submitted to the department of safety within six (6) months of the violation date. No suspension action shall be taken by the department unless the request is made within six (6) months of the violation date except in the case where the driver is a commercial license holder, or the violation occurred in a commercial motor vehicle. Prior to suspending the license of any person as authorized in this subsection (a), the department shall notify the licensee in writing of the proposed suspension and, upon the licensee's request, shall afford the licensee an opportunity for a hearing to show that there is an error in the records received by the department; provided, that the request is made within thirty (30) days following the notification of proposed suspension or cancellation. Failure to make the request within the time specified shall without exception constitute a waiver of that right;

(J) Is under eighteen (18) years of age and has withdrawn either voluntarily or involuntarily or has failed to maintain satisfactory academic progress from a secondary school as provided in § 49-6-3017; or

(K)(i) Has contributed as a driver to the occurrence of an accident on school property, or on a highway with special speed limits, in which a pedestrian child suffers serious bodily injury as the result of the accident;

(ii) As used in this subdivision (a)(1)(K), unless the context otherwise requires:

(a) "Highway with special speed limits" means any highway with reduced speed limits, authorized pursuant to § 55-8-152, when a warning flasher or flashers are in operation, and while children are actually present;

(b) "Pedestrian child" means any person under eighteen (18) years of age afoot, in a mechanized wheelchair or on a nonmotorized wheeled device, including, but not limited to, a bicycle, a scooter, a skateboard, roller skates, in-line skates or a wheelchair;

(c) "School property" means any outdoor grounds contained within a public or private preschool, nursery school, kindergarten, elementary or secondary school's legally defined property boundaries, as registered in a county register's office; and

(d) "Serious bodily injury" means bodily injury that involves:

- (1) A substantial risk of death;
- (2) Protracted unconsciousness;
- (3) Extreme physical pain;
- (4) Protracted or obvious disfigurement; or
- (5) Protracted loss or substantial impairment of a function of a bodily member, organ or mental faculty.

(2) No municipal law enforcement officer is authorized to seize the license of an operator or chauffeur for a traffic offense in violation of a municipal ordinance or a traffic offense as provided in chapter 8 of this title.

(b)(1) The department is authorized to cancel any operator's or chauffeur's license upon determining that the licensee was not entitled to the issuance, of the license or that the licensee failed to give the required or correct information in the application or committed any fraud in making the application.

(2) Upon the cancellation, the licensee must surrender the license so

cancelled to the department.

(c)(1) The department, upon suspending or revoking a license, shall require that the license be surrendered to and be retained by the department. Prior to the reissuance of any license revoked because of a conviction of driving while under the influence of liquor or an intoxicating drug, after a second or subsequent conviction, the department shall require the owner to submit evidence that the owner has completed a program of alcohol or drug abuse education, or has completed treatment by a physician board certified or eligible in psychiatry or a licensed psychologist certified with competence in clinical psychology; or, at a facility licensed by the department of mental health and substance abuse services to provide this treatment. Certification of the psychiatrist or clinical psychologist or facility licensed by the department of mental health and substance abuse services under this section is not to be construed as a prediction of future behavior but merely certification of completion of the program.

(2) When the examination, as required by this subsection (c), is administered by a state supported mental health facility, the facility and medical doctors or doctors of psychology employed by the facility who administer the examinations within the course and scope of the doctor's authority under the statute, shall be immune from tort liability for the proper dissemination of any report or findings to the department of safety that results from the examination; provided, that this immunity shall not extend to any other person, institution, or other member of the private sector, not employed or attached to a state supported mental health facility.

(3)(A) The trial judge of the court wherein the trial for the offense of operating a vehicle under the influence of alcohol or an intoxicating drug is pending may order the issuance of a restricted license allowing the person so arrested to operate a motor vehicle for the purpose of going to and from and working at the person's regular place of employment or to operate only a motor vehicle that is equipped with a functioning ignition interlock device. The trial judge may order the issuance of a restricted license allowing a person whose license has been suspended due to a conviction for violating § 39-14-151 or chapter 10, part 5 of this title to operate a motor vehicle for the purpose of going to and from and working at the person's regular place of employment. A Tennessee resident, whose operator's license has been suspended because of an arrest in another jurisdiction on a charge of operating a motor vehicle while under the influence of an intoxicating liquor or a narcotic drug, may apply to a judge of any court of the county of the person's residence having jurisdiction to try charges for a restricted motor vehicle operator's license.

(B) The judge may order the issuance of a restricted license, if:

(i) Based upon the records of the department of safety the person does not have a prior conviction for a violation of § 39-13-106, § 39-13-213(a)(2), or § 39-13-218 in this state, or a similar offense in another state; and

(ii) No person was seriously injured or killed in the course of the conduct that resulted in the driver's conviction under § 55-10-401.

(C) If the trial judge imposes geographic restrictions, the trial judge may issue the order allowing the person so convicted to operate a motor vehicle for the limited purposes of going to and from:

(i) And working at the person's regular place of employment;

(ii) The office of the person's probation officer or other similar location for the sole purpose of attending a regularly scheduled meeting or other function with the probation officer by a route to be designated by the probation officer;

(iii) A court-ordered alcohol safety program;

(iv) A college or university in the case of a student enrolled full time in the college or university;

(v) A scheduled interlock monitoring appointment;

(vi) A court ordered outpatient alcohol and drug treatment program; and

(vii) The person's regular place of worship for regularly scheduled religious services conducted by a bona fide religious institution as defined in § 48-101-502(c).

(D) If the violation resulting in the person's conviction for driving under the influence occurred prior to July 1, 2013, the law in effect when the violation occurred shall govern the person's eligibility for a restricted motor vehicle operator license unless the person petitions the court to consider the person's eligibility under the law in effect when the petition is filed.

(E) The person so arrested may obtain a certified copy of the order and within ten (10) days after it is issued present it, together with an application fee of sixty-five dollars (\$65.00), to the department, which shall forthwith issue a restricted license embodying the limitations imposed in the order.

(4) Where a nonresident whose license has been suspended or revoked by any other state subsequently becomes a bona fide resident of this state, and where the person has been granted a restricted license by the other state if the triggering offense would under the laws of this state provide for the issuance of a restricted driver license upon petition to a judge of the court of general sessions, or its equivalent, for the county wherein the person resides, the court may order the issuance of a restricted motor vehicle operator's license. The court shall have discretion to order the person to operate only a motor vehicle that is equipped with a functioning ignition interlock device or place additional limitations on the person's restricted license; provided, however, that a restricted license issued pursuant to this subdivision (c)(4) without an ignition interlock requirement shall be subject to geographic restrictions, as provided in subdivision (c)(3), during the mandatory revocation/suspension period. If the person has a prior conviction within the past ten (10) years for a violation of § 55-10-401 or § 55-10-421, in this state or a similar offense in any other jurisdiction, the court shall be required to order the person to operate only a motor vehicle that is equipped with a functioning ignition interlock device. The person may obtain a certified copy of the order and within thirty (30) days after it is issued present it, together with an application fee of sixty-five dollars (\$65.00), to the department, which shall then issue a restricted license embodying the limitations imposed in the order.

(d)(1) This subsection (d) applies statewide.

(2) A person whose license has been suspended, pursuant to subdivision (a)(1)(H) or (a)(1)(I), subject to the approval of the court, may pay any local fines or costs, arising from the convictions or failure to appear in any court, by establishing a payment plan with the local court or the court clerk of the

jurisdiction. Notwithstanding § 55-50-303(b)(2), the fines and costs for a conviction of driving while suspended, when the conviction was a result of a suspension pursuant to subdivision (a)(1)(H) or (a)(1)(I), may be included in such payment plan, subject to the approval of the court.

(3) The department is authorized to reinstate a person's driving privileges when the person provides the department with certification from the local court, or court clerk of the jurisdiction that the person has entered into a payment plan with the local court or the court clerk of the jurisdiction and has satisfied all other provisions of law relating to the issuance and restoration of a driver license.

(4) The department shall, upon notice of the person's failure to comply with any payment plan established pursuant to this subsection (d), suspend the license of the person. Persons who default under this subsection (d) shall not be eligible for any future payment plans under this subsection (d). The department shall notify the person in writing of the proposed suspension, and upon request of the person within thirty (30) days of the notification, shall provide the person an opportunity for a hearing to show that the person has, in fact, complied with the local court's or the court clerk's payment plan. Failure to make the request within thirty (30) days of receipt of notification shall, without exception, constitute a waiver of the right.

(5) Any person who has defaulted on a pay plan to pay fines and costs for suspension actions taken under subdivision (a)(1)(H) or (a)(1)(I), shall not be eligible to participate in a payment plan, nor shall the department of safety have the authority to accept a payment plan as a condition precedent to the restoration of driving privileges.

(6) Any county that participates in the payment plan authorized by this subsection (d) shall pay to the state any expense required to be paid for state implementation of this subsection (d). The payment shall be divided pro rata among the counties to which this subsection (d) applies. The payment shall be made prior to the implementation by the county of this subsection (d).

(e)(1) Any resident or nonresident whose operator's or chauffeur's license or right or privilege to operate a motor vehicle in this state has been suspended or revoked as provided in this chapter shall not operate a motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during the suspension or after the revocation until a new license is obtained when and as permitted under this chapter.

(2) The privilege of driving a motor vehicle on the highways of this state given to a nonresident hereunder is subject to suspension or revocation by the department in like manner and for like cause as an operator's or chauffeur's license issued under this chapter may be suspended or revoked.

(3) The department is further authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, to forward a certified copy of the record to the motor vehicle administrator in the state wherein the person so convicted is a resident.

(4) The department is authorized to suspend or revoke the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of the conviction of the person in another state of an offense therein which, if committed in this state, would be grounds for the suspension or revocation of the license of an operator or chauffeur.

(f)(1) The department shall not suspend a driver license or privilege to drive a motor vehicle on the public highways for a period of more than six (6) months for a first offense nor more than one (1) year for a subsequent offense, except as permitted under § 55-50-504, unless in any case an order of a court provides for a longer period of suspension. At the end of the period for which a license has been suspended, the department is authorized, in its discretion, to require a reexamination of the licensee as a prerequisite to the reissuance of the license.

(2) Any person whose license is suspended for driving under the influence of drugs or intoxicants, or for refusal to submit to a blood test under §§ 55-10-406 and 55-10-407, shall have the period of suspension computed from the time that the person's driver license was actually taken from the person's possession, and the period of license suspension shall begin to run from that point until the license is returned.

(3) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked shall not be entitled to have the license or privilege renewed or restored unless the revocation was for a cause that has been removed, except that after the expiration of one (1) year or the period of suspension prescribed by a court from the date on which the revoked license was surrendered to and received by the department, the person may make application for a new license as provided by law, but the department shall not issue a new license unless and until it is satisfied after investigation of the character, habits and driving ability of the person that it will be safe to grant the privilege of driving a motor vehicle on the public highways. No license that has been revoked, on account of the conviction of the licensee for murder or manslaughter resulting from the operation of a motor vehicle, shall be reissued except as provided in § 55-50-501(a)(1).

(4) Where the revocation involved is the first revocation of the license or privilege of the person, the application for a new license may be made after the expiration of six (6) months from the date on which the revoked license was surrendered and received by the department. No license that has been revoked on account of the conviction of the licensee for murder or manslaughter resulting from the operation of a motor vehicle shall be reissued except as provided in § 55-50-501(a)(1).

(g) When considering the suspension of a driver license, the department may take into account offenses committed by that driver outside this state and reported to the department only if the offenses would, under the laws of this state, be considered grounds for suspension in this state. If the offenses would be grounds for suspension in the state of conviction, but not in this state they shall be disregarded by the department.

(h) Drivers of commercial motor vehicles shall have their licenses suspended for violations and for the length of time specified in § 55-50-405.

(i)(1) The department shall establish a method by which any person who makes application for or who holds a commercial driver license may elect an alternate address to which any suspension notices shall be mailed.

(2) At least two (2) times per month during two (2) different weeks of the month, the department shall make available for public inspection a list of persons whose commercial driver license has been suspended.

(j)(1) Any person whose license has been suspended for having been convicted of a driving offense, and for the subsequent failure to pay a fine or cost imposed for that offense pursuant to subdivision (a)(1)(H), may apply to the

court where the person was convicted for the issuance of a restricted license. The court shall order the person whose license has been suspended to make payments to the court during the period of restricted license, as a condition of receiving the restricted license, in an amount reasonably calculated to fully pay the moneys owing the court during the period of the restricted license, including authorization of payment of the fine by installments as authorized in § 40-24-101. Failure to timely make the payments as ordered by the court shall result in the suspension of the restricted license. Any person whose driver license or permit is revoked, suspended or cancelled for any reason other than subdivision (a)(1)(H) shall not be eligible for, nor shall the court have any authority to order the issuance of the restricted license pursuant to this subsection (j). The restricted license shall be valid only for the purpose of going to and from work at the person's regular place of employment. The judge shall have the authority to issue a restricted driver license under this subsection (j) only one (1) time per violator.

(2) The judge shall order the issuance of a restricted license, based upon the records of the department of safety, if:

(A) The department suspended the person's license as a result of the person's conviction of any driving offense in any court and for the person's failure to pay or secure any fine or costs imposed for that offense;

(B) The violation resulting in the person's present conviction was not for driving under the influence of an intoxicant, or for refusal to submit to a blood test under § 55-10-406;

(C) The person does not have a prior conviction for a violation of § 39-13-106, § 39-13-213(a)(2), or § 39-13-218 in this state, or a similar offense in another state; and

(D) The person does not have a prior conviction for a violation of § 55-10-401 or § 55-10-421 within ten (10) years of the present violation, in this state or a similar offense in another state.

(3) The order shall state with all practicable specificity the necessary times and places of permissible operation of a motor vehicle. The person so arrested may obtain a certified copy of the order and, within ten (10) days after the order is issued, present it, together with an application fee of sixty-five dollars (\$65.00), to the department, which shall forthwith issue a restricted license embodying the limitations imposed in the order. After proper application and until the restricted license is issued, a certified copy of the order may serve in lieu of a motor vehicle operator's license.

(k)(1) This subsection (k) shall apply only in any municipality located in any county having a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census.

(2) Notwithstanding § 28-3-110, the court clerk of any municipality may establish an accounts receivable amnesty plan for payment of any outstanding judgment resulting from failure to pay local fines or costs owed by a person whose license has been suspended, pursuant to subdivision (a)(1)(H) or (a)(1)(I). The plan shall allow the person to pay the outstanding judgment, older than ten (10) years after the cause of action has commenced, at a reduced rate of fifty percent (50%) during the first six fiscal months of each year.

(3) The department is authorized to reinstate a person's driving privileges when the person provides the department with certification from the court clerk of any municipality that the person has paid pursuant to this subsection (k) and has satisfied all other provisions of law relating to the

issuance and restoration of a driver license.

(l) [Deleted by 2010 amendment, effective June 30, 2012.]

**56-1-102. Definitions for this chapter, chapters 2-4, 7, 10 and 11 of this title.**

As used in this chapter and chapters 2-4, 7, 10 and 11 of this title, unless the context otherwise requires:

- (1) "Commissioner" means the commissioner of commerce and insurance;
- (2) "Company" or "insurance company" includes all corporations, associations, partnerships, or individuals engaged as principals in the business of insurance;
- (3) "Department" means the department of commerce and insurance;
- (4) "Domestic" designates those companies incorporated in this state;
- (5) "Foreign," when used without limitation, includes all companies formed by authority of any other state or government;
- (6) "Net assets" means the funds of an insurance company available for the payment of its obligations in this state, including uncollected and deferred premiums not more than three (3) months due on policies actually in force, after deducting from the funds all unpaid losses and claims, and claims for losses, and all other debts and liabilities, inclusive of policy liability and exclusive of capital; and
- (7) "Unearned premiums," "reinsurance reserve," and "net value of policies" or "premium reserve," severally, mean the liability of an insurance company upon its insurance contracts, other than accrued claims computed by rules of valuation established by §§ 56-1-402 — 56-1-405 [see the Compiler's Notes].

**56-1-302. Powers, duties and responsibilities of director — Alternative method of license renewals.**

(a) Notwithstanding any contrary law, except title 55, chapter 17, the director has the power, duty and responsibility to:

- (1) Act as chief administrative officer for each board;
- (2) Employ all consultants, investigators, inspectors, legal counsel and other personnel necessary to staff and carry out the functions of the boards, and assign the personnel in a manner designed to assure their most efficient use, excluding the board of pharmacy;
- (3) Provide office space and necessary quarters for the boards;
- (4) Maintain a central filing system for official records and documents of all boards;
- (5) Promulgate rules and regulations for all administrative functions and activities of the boards;
- (6) Enforce all regulations promulgated by the boards;
- (7) Collect and account for all fees prescribed to be paid to each board, and, unless otherwise prescribed by law, deposit the fees in the state treasury, and the commissioner of finance and administration shall make allotments out of the general fund as may be necessary to defray the expenses of the division and boards as provided by law;
- (8) Perform other duties the commissioner prescribes, or as prescribed by law;
- (9)(A) Issue monthly a press release containing a disciplinary report, which shall list all disciplinary actions taken by each board during the

prior month. The report shall list, by board, the following:

- (i) Name and professional address of any person disciplined the prior month;
- (ii) Disciplinary action taken; and
- (iii) Any civil penalty imposed; and

(B) The disciplinary report for the prior month shall be made available to newspapers of general circulation in each of the state's metropolitan areas, Nashville, Memphis, Knoxville, Chattanooga and the tri-cities area composed of Bristol, Johnson City and Kingsport, by the fifteenth of each following month.

(b)(1)(A) Notwithstanding any other law to the contrary, the director shall establish an alternative system of renewals of licenses issued by any regulatory board attached to the division of regulatory boards of the department under § 4-3-1304. The system shall be designed to allow for the distribution of the renewal workload as uniformly as is practicable throughout the calendar year.

(B) Licenses issued under the alternative method are valid for twenty-four (24) months, and shall expire on the last day of the last month of the license period; however, during a transition period or at any time thereafter, if the director, after consultation with the affected board or boards, determines that the volume of work for any given interval is unduly burdensome or costly, either the licenses or renewals, or both of them, may be issued for terms of not less than six (6) months nor more than eighteen (18) months. The fee imposed for any license under the alternative interval method for a period other than twenty-four (24) months shall be proportionate to the annual fee and modified in no other manner, except that the proportional fee shall be rounded off to the nearest quarter of a dollar (25¢).

(2) As used in subdivision (b)(1), "license" is defined as in § 4-5-102.

(c) Notwithstanding any other law to the contrary, the director of the division of regulatory boards of the department may implement a system for electronic submission of complaints or applications for licensure or registration to any regulatory program attached to the division, including any renewal thereof, and to notify licensees electronically of renewals, rulemaking or any other notification.

#### **56-1-308. Penalty for violation of statute, rule or order — Recovery.**

(a) With respect to any person required to be licensed, permitted, or authorized by any board, commission or agency attached to the division of regulatory boards, each respective board, commission or agency may assess a civil penalty against the person in an amount not to exceed one thousand dollars (\$1,000) for each separate violation of a statute, rule or order pertaining to the board, commission or agency. Each day of continued violation constitutes a separate violation.

(b) Each board, commission or agency shall by rule establish a schedule designating the minimum and maximum civil penalties that may be assessed under this section. In assessing civil penalties, the following factors may be considered:

- (1) Whether the amount imposed will be a substantial economic deterrent to the violator;

- (2) The circumstances leading to the violation;
- (3) The severity of the violation and the risk of harm to the public;
- (4) The economic benefits gained by the violator as a result of noncompliance; and
- (5) The interest of the public.

(c)(1) Civil penalties assessed pursuant to this section shall become final thirty (30) days after the date a final order of assessment is served. Payment of any civil penalty assessed after a hearing held pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, is a prerequisite to issuance or renewal of any license issued by a board, commission or agency attached to the division unless the final decision of the board, commission or agency is stayed pursuant to § 4-5-322(c), or acceptable arrangements for payment of the civil penalty are made with the board, commission or agency prior to the issuance or renewal of any license issued by a board, commission or agency attached to the division.

(2) If the violator fails to pay an assessment when it becomes final, the division may apply to the appropriate court for a judgment and seek execution of the judgment.

(3) Jurisdiction for recovery of the penalties shall be in the chancery court of Davidson County, or the chancery court of the county in which all or part of the violations occurred.

(d) All sums recovered pursuant to this section shall be paid into the state treasury.

**56-1-402. [Repealed.]**

**56-1-403. [Repealed.]**

**56-1-415. Issuance of policies by domestic life insurance companies forbidden when assets are insufficient.**

When the actual funds of a domestic life insurance company, exclusive of its capital, are not of a net cash value equal to its liabilities, including the net value of its policies, computed by the rule of valuation established by part 9 of this chapter, the commissioner shall notify the company and its agents to issue no new policies until its funds become equal to its liabilities.

**56-1-901. Short title and part definitions.**

(a) This part shall be known and may be cited as the “Standard Valuation Law.”

(b) For purposes of this part, the following definitions shall apply on or after the operative date of the valuation manual:

(1) “Accident and health insurance contracts” means contracts that incorporate morbidity risk and provide protection against economic loss resulting from accident, sickness or medical conditions and as may be specified in the valuation manual;

(2) “Appointed actuary” means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in § 56-1-903;

(3) “Company” means an entity that:

(A) Has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and

has at least one (1) such policy in force or on claim; or

(B) Has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance or deposit-type contracts in this state;

(4) "Deposit-type contract" means contracts that do not incorporate mortality or morbidity risks, and as may be specified in the valuation manual;

(5) "Life insurance" means contracts that incorporate mortality risk, including annuity and pure endowment contracts, and as may be specified in the valuation manual;

(6) "NAIC" means the National Association of Insurance Commissioners;

(7) "Policyholder behavior" means any action a policyholder, contract holder or any other person with the right to elect options, such as a certificate holder, may take under a policy or contract subject to this part including, but not limited to, lapse, withdrawal, transfer, deposit, premium payment, loan, annuitization or benefit elections prescribed by the policy or contract but excluding events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract;

(8) "Principle-based valuation" means a reserve valuation that uses one (1) or more methods or one (1) or more assumptions determined by the insurer and is required to comply with § 56-1-915 as specified in the valuation manual;

(9) "Qualified actuary" means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American Academy of Actuaries' qualification standards for actuaries signing such statements and who meets the requirements specified in the valuation manual;

(10) "Tail risk" means a risk that occurs either where the frequency of low probability events is higher than expected under a normal probability distribution or where there are observed events of very significant size or magnitude; and

(11) "Valuation manual" means the manual of valuation instructions adopted by the NAIC as specified in this part or as subsequently amended.

#### **56-1-902. Reserve valuation.**

(a) For policies and contracts issued prior to the operative date of the valuation manual:

(1) The commissioner shall annually value, or cause to be valued, the reserve liabilities (reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state issued on or after January 1, 1962, and prior to the operative date of the valuation manual. In calculating reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves required of a foreign or alien company, the commissioner may accept a valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard provided in this part.

(2) Sections 56-1-904 — 56-1-913 shall apply to all policies and contracts, as appropriate, subject to this part issued on or after January 1, 1962, and prior to the operative date of the valuation manual and the provisions set forth in §§ 56-1-914 and 56-1-915 shall not apply to any such policies and contracts.

(3) The minimum standard for the valuation of policies and contracts issued prior to January 1, 1962, shall be that provided by the laws in effect immediately prior to that date.

(b) For policies and contracts issued on or after the operative date of the valuation manual:

(1) The commissioner shall annually value, or cause to be valued, the reserves for all outstanding life insurance contracts, annuity and pure endowment contracts, accident and health contracts, and deposit-type contracts of every company issued on or after the operative date of the valuation manual. In lieu of the valuation of the reserves required of a foreign or alien company, the commissioner may accept a valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard provided in this part; and

(2) Sections 56-1-914 and 56-1-915 shall apply to all policies and contracts issued on or after the operative date of the valuation manual.

### **56-1-903. Actuarial opinion of reserves.**

(a) For an actuarial opinion prior to the operative date of the valuation manual:

(1) Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The commissioner shall define by regulation the specifics of this opinion and add any other items deemed to be necessary to its scope;

(2) For actuarial analysis of reserves and assets supporting reserves:

(A) Every life insurance company, except as exempted by regulation, shall also annually include in the opinion required by subdivision (a)(1), an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including, but not limited to, the benefits under, and expenses associated with, the policies and contracts;

(B) The commissioner may provide by regulation for a transition period for establishing any higher reserves that the qualified actuary may deem necessary in order to render the opinion required by this section;

(3) Each opinion required by subdivision (a)(2) shall be governed by the

following provisions:

(A) A memorandum, in form and substance acceptable to the commissioner as specified by regulation, shall be prepared to support each actuarial opinion;

(B) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by regulation or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by regulations promulgated by the commissioner or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the commissioner;

(4) Every opinion required by this subsection (a) shall be governed by the following provisions:

(A) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1995;

(B) The opinion shall apply to all business in force including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by regulation;

(C) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on such additional standards as the commissioner prescribes by regulation;

(D) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state;

(E) For purposes of this section, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in the regulation;

(F) Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision or conduct with respect to the actuary's opinion;

(G) Disciplinary action by the commissioner against the company or the qualified actuary shall be defined in regulations promulgated by the commissioner;

(H) Except as provided in subdivisions (a)(4)(L)-(N), documents, materials or other information in the possession or control of the department that are a memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection with the memorandum, shall be confidential by law and privileged, shall not be subject to § 10-7-501 or § 56-1-602, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties;

(I) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the

commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subdivision (a)(4)(H);

(J) In order to assist in the performance of the commissioner's duties, the commissioner may:

(i) Share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subdivision (a)(4)(H) with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities; provided, that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;

(ii) Receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(iii) Enter into agreements governing sharing and use of information consistent with subdivisions (a)(4)(H)-(J);

(K) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subdivision (a)(4)(J);

(L) A memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection with the memorandum, may be subject to subpoena for the purpose of defending an action seeking damages from the actuary submitting the memorandum by reason of an action required by this section or by regulation;

(M) The memorandum or other material may otherwise be released by the commissioner with the written consent of the company or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material; and

(N) Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

(b) For an actuarial opinion of reserves after the operative date of the valuation manual:

(1) Every company with outstanding life insurance contracts, accident and health insurance contracts or deposit-type contracts in this state and subject to regulation by the commissioner shall annually submit the opinion of the appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that satisfy contractual provisions, are

consistent with prior reported amounts and comply with applicable laws of this state. The valuation manual will prescribe the specifics of this opinion including any items deemed to be necessary to its scope;

(2) For actuarial analysis of reserves and assets supporting reserves, every company with outstanding life insurance contracts, accident and health insurance contracts or deposit-type contracts in this state and subject to regulation by the commissioner, except as exempted in the valuation manual, shall also annually include in the opinion required by subdivision (b)(1), an opinion of the same appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including, but not limited to, the benefits under, and expenses associated with, the policies and contracts;

(3) Each opinion required by subdivision (b)(2) shall be governed by the following provisions:

(A) A memorandum, in form and substance as specified in the valuation manual, and acceptable to the commissioner, shall be prepared to support each actuarial opinion; and

(B) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified in the valuation manual or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the valuation manual or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the commissioner;

(4) Every opinion shall be governed by the following provisions:

(A) The opinion shall be in form and substance as specified in the valuation manual and acceptable to the commissioner;

(B) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after the operative date of the valuation manual;

(C) The opinion shall apply to all policies and contracts subject to this subsection (b), plus other actuarial liabilities as may be specified in the valuation manual;

(D) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board or its successor, and on such additional standards as may be prescribed in the valuation manual;

(E) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state;

(F) Except in cases of fraud or willful misconduct, the appointed actuary shall not be liable for damages to any person, other than the insurance company and the commissioner for any act, error, omission,

decision or conduct with respect to the appointed actuary's opinion; and  
(G) Disciplinary action by the commissioner against the company or the appointed actuary shall be defined in regulations promulgated by the commissioner.

**56-1-904. Computation of minimum standard.**

Except as provided in §§ 56-1-905, 56-1-906 and 56-1-913, the minimum standard for the valuation of policies and contracts issued prior to January 1, 1962, shall be that provided by the laws in effect immediately prior to that date. Except as otherwise provided in §§ 56-1-905, 56-1-906 and 56-1-913, the minimum standard for the valuation of all policies and contracts issued on or after January 1, 1962, shall be the commissioner's reserve valuation methods defined in §§ 56-1-907, 56-1-908, 56-1-911 and 56-1-913, three and one half percent (3.5%) interest, or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after May 6, 1973, four percent (4%) interest for policies issued prior to March 13, 1978, five and one half percent (5.5%) interest for single premium life insurance policies and four and one half percent (4.5%) interest for all other policies issued on or after March 13, 1978, and the following tables:

(1) For ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies: the Commissioners 1941 Standard Ordinary Mortality Table for policies issued prior to the operative date of § 56-7-401(f), the Commissioners 1958 Standard Ordinary Mortality Table for policies issued on or after the operative date of § 56-7-401(f) and prior to the operative date of § 56-7-401(h); provided, that, for any category of policies issued on female risks, all modified net premiums and present values referred to in this part may be calculated according to an age not more than six (6) years younger than the actual age of the insured; and for policies issued on or after the operative date of § 56-7-401(h):

(A) The Commissioners 1980 Standard Ordinary Mortality Table;

(B) At the election of the company for any one (1) or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; or

(C) Any ordinary mortality table, adopted after 1980 by the NAIC, which is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies;

(2) For industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in the policies: the 1941 Standard Industrial Mortality Table for policies issued prior to the operative date of § 56-7-401(g), and for policies issued on or after the operative date of § 56-7-401(g), the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table adopted after 1980 by the NAIC that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for the policies;

(3) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies: the 1937 Standard Annuity Mortality Table, or at the option of the company, the Annuity Mortality Table for 1949, Ultimate or any modification of either of these tables approved by the commissioner;

(4) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies: the Group Annuity Mortality Table for 1951, a modification of the table approved by the commissioner, or at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;

(5) For total and permanent disability benefits in or supplementary to ordinary policies or contracts: for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates adopted after 1980 by the NAIC, that are approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for those policies; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either those tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(6) For accidental death benefits in or supplementary to policies issued on or after January 1, 1966: the 1959 Accidental Death Benefits Table or any accidental death benefits table adopted after 1980 by the NAIC that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for those policies, for policies issued on or after January 1, 1961, and prior to January 1, 1966, either that table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table for calculating the reserves for life insurance policies; and

(7) For group life insurance, life insurance issued on the substandard basis and other special benefits: tables approved by the commissioner.

#### **56-1-905. Computation of minimum standard for annuities.**

(a) Except as provided in § 56-1-906, the minimum standard of valuation for individual annuity and pure endowment contracts issued on or after the operative date of this section and for annuities and pure endowments purchased on or after the operative date under group annuity and pure endowment contracts, shall be the commissioner's reserve valuation methods defined in §§ 56-1-907 and 56-1-908 and the following tables and interest rates:

(1) For individual annuity and pure endowment contracts issued prior to March 13, 1978, excluding any disability and accidental death benefits in those contracts: the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner, and six percent (6%) interest for single premium immediate annuity contracts and four percent (4%) interest for all other individual annuity and pure endowment contracts;

(2) For individual single premium immediate annuity contracts issued on or after March 13, 1978, excluding any disability and accidental death

benefits in those contracts: the 1971 Individual Annuity Mortality Table or any individual annuity mortality table adopted after 1980 by the NAIC that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for these contracts, or any modification of these tables approved by the commissioner, and seven and one half percent (7.5%) interest;

(3) For individual annuity and pure endowment contracts issued on or after March 13, 1978, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in those contracts: the 1971 Individual Annuity Mortality Table or any individual annuity mortality table adopted after 1980 by the NAIC, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for those contracts, or any modification of these tables approved by the commissioner, and five and one half percent (5.5%) interest for single premium deferred annuity and pure endowment contracts and four and one half percent (4.5%) interest for all other individual annuity and pure endowment contracts;

(4) For annuities and pure endowments purchased prior to March 13, 1978, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under those contracts: the 1971 Group Annuity Mortality Table or any modification of this table approved by the commissioner, and six percent (6%) interest; and

(5) For annuities and pure endowments purchased on or after March 13, 1978, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under those contracts: the 1971 Group Annuity Mortality Table, or any group annuity mortality table adopted after 1980 by the NAIC that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for annuities and pure endowments, or any modification of these tables approved by the commissioner, and seven and one half percent (7.5%) interest.

(b) After May 6, 1973, any company may file with the commissioner a written notice of its election to comply with this section after a specified date before January 1, 1979, which shall be the operative date of this section for that company. If a company makes no election, the operative date of this section for that company shall be January 1, 1979.

#### **56-1-906. Computation of minimum standard by calendar year of issue.**

(a) The interest rates used in determining the minimum standard for the valuation of the following shall be the calendar year statutory valuation interest rates as defined in this section:

(1) Life insurance policies issued in a particular calendar year, on or after the operative date of § 56-7-401(h);

(2) Individual annuity and pure endowment contracts issued in a particular calendar year, on or after January 1, 1983;

(3) Annuities and pure endowments purchased in a particular calendar year, on or after January 1, 1983, under group annuity and pure endowment contracts; and

(4) The net increase, if any, in a particular calendar year after January 1,

1983, in amounts held under guaranteed interest contracts.

(b) For calendar year statutory valuation interest rates:

(1) The calendar year statutory valuation interest rates,  $I$ , shall be determined as follows and the results rounded to the nearer one-quarter of one percent (0.25%), where  $R^1$  is the lesser of  $R$  and 0.09,  $R^2$  is the greater of  $R$  and 0.09,  $R$  is the reference interest rate defined in this section, and  $W$  is the weighting factor defined in this section:

(A) For life insurance:

$$I = .03 + W \cdot (R_1 - .03) + W / 2 \cdot (R - .09)$$

(B) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

$$I = .03 + W \cdot (R - .03)$$

(C) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in subdivision (b)(1)(B), the formula for life insurance in subdivision (b)(1)(A) shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten (10) years and the formula for single premium immediate annuities in subdivision (b)(1)(B) shall apply to annuities and guaranteed interest contracts with guarantee duration of ten (10) years or less;

(D) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities in subdivision (b)(1)(B) shall apply;

(E) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities in subdivision (b)(1)(B) shall apply;

(2)(A) However, if the calendar year statutory valuation interest rate for a life insurance policy issued in any calendar year determined without reference to this subdivision (b)(2)(A) differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one half of one percent (0.5%), the calendar year statutory valuation interest rate for the life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year;

(B) For purposes of applying subdivision (b)(2)(A), the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980, using the reference interest rate defined in 1979, and shall be determined for each subsequent calendar year regardless of when § 56-7-401(h) becomes operative;

(c) The weighting factors referred to in the formulas described in subsection (b) are given in the following tables:

(1)(A) Weighting factors for life insurance:

Guarantee Duration Years	Weighting Factors
10 or less	0.50
More than 10, but not more than 20	0.45
More than 20	0.35

(B) For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

(2) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options: 0.80;

(3) Weighting factors for other annuities and for guaranteed interest contracts, except as provided in subdivision (c)(2), shall be as specified in subdivisions (c)(3)(A), (B) and (C), according to the rules and definitions in subdivisions (c)(3)(D), (E) and (F):

(A) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factor For Plan Type		
	A	B	C
5 or less:	0.80	0.60	0.50
More than 5, but not more than 10:	0.75	0.60	0.50
More than 10, but not more than 20:	0.65	0.50	0.45
More than 20:	0.45	0.35	0.35

(B) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors in subdivision (c)(3)(A) increased by:

For Plan Type		
A	B	C
0.15	0.25	0.05

(C) For annuities and guaranteed interest contracts valued on an issue year basis, other than those with no cash settlement options, that do not guarantee interest on considerations received more than one (1) year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis that do not guarantee interest rates on considerations received more than twelve (12) months beyond the valua-

tion date, the factors in subdivision (c)(3)(A) or derived in subdivision (c)(3)(B) increased by:

For Plan Type		
A	B	C
0.05	0.05	0.05

(D) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty (20) years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guaranteed duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(E) Plan type as used in subdivisions (c)(3)(A)-(C) is defined as follows:

- (i) Plan Type A: At any time policyholder may withdraw funds only:
  - (a) With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company;
  - (b) Without an adjustment but installments over five (5) years or more;
  - (c) As an immediate life annuity; or
  - (d) No withdrawal permitted;
- (ii) Plan Type B: Before expiration of the interest rate guarantee, policyholder may withdraw funds only:
  - (a) With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company;
  - (b) Without an adjustment but in installments over five (5) years or more;
  - (c) No withdrawal permitted; or
  - (d) At the end of interest rate guarantee, funds may be withdrawn without an adjustment in a single sum or installments over less than five (5) years;
- (iii) Plan Type C: Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five (5) years either:
  - (a) Without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or
  - (b) Subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(F)(i) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis.

(ii) As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or

guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(d) The reference interest rate referred to in subsection (b) means:

(1) For life insurance, the lesser of the average over a period of thirty-six (36) months and the average over a period of twelve (12) months, ending on June 30 of the calendar year preceding the year of issue, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.;

(2) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or year of purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.;

(3) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subdivision (d)(2), with guarantee duration in excess of ten (10) years, the lesser of the average over a period of thirty-six (36) months and the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.;

(4) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subdivision (d)(2), with guarantee duration of ten (10) years or less, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.;

(5) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.; or

(6) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in subdivision (d)(2), the average over a period of twelve (12) months, ending on June 30 of the calendar year of the change in the fund, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(e) For alternative method for determining reference interest rates, in the event that the monthly average of the composite yield on seasoned corporate bonds is no longer published by Moody's Investors Service, Inc., or in the event that the NAIC determines that the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc., is no

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longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate adopted by the NAIC and approved by regulations promulgated by the commissioner may be substituted.

**56-1-907. Reserve valuation method — Life insurance and endowment benefits.**

(a) Except as otherwise provided in §§ 56-1-908, 56-1-911 and 56-1-913, reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of the future guaranteed benefits provided for by those policies, over the then present value of any future modified net premiums therefore. The modified net premiums for a policy shall be the uniform percentage of the respective contract premiums for the benefits such that the present value, at the date of issue of the policy, of all modified net premiums shall be equal to the sum of the then present value of the benefits provided for by the policy and the excess of subdivision (a)(1) over subdivision (a)(2), as follows:

(1) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one (1) per annum payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one (1) year higher than the age at issue of the policy;

(2) A net one-year term premium for the benefits provided for in the first policy year.

(b) For a life insurance policy issued on or after January 1, 1986, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and which provides an endowment benefit or a cash surrender value or a combination in an amount greater than the excess premium, the reserve according to the commissioner's reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined in this part as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than the excess premium shall, except as otherwise provided in § 56-1-911, be the greater of the reserve as of the policy anniversary calculated as described in subsection (a) and the reserve as of the policy anniversary calculated as described in subsection (a), but with:

(1) The value defined in subdivision (a)(1) being reduced by fifteen percent (15%) of the amount of such excess first year premium;

(2) All present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date;

(3) The policy being assumed to mature on that date as an endowment; and

(4) The cash surrender value provided on that date being considered as an

endowment benefit.

(c) In making the comparison the mortality and interest bases in §§ 56-1-904 and 56-1-906 shall be used.

(d) Reserves according to the commissioner's reserve valuation method shall be calculated by a method consistent with subsections (a) and (b) for:

(1) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums;

(2) Group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under § 408 of the Internal Revenue Code, codified in 26 U.S.C. § 408, as amended;

(3) Disability and accidental death benefits in all policies and contracts; and

(4) All other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts.

**56-1-908. Reserve valuation method — Annuity and pure endowment benefits.**

(a) This section shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under § 408 of the Internal Revenue Code, codified in 26 U.S.C. § 408, as amended.

(b) Reserves according to the commissioners annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in the contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by the contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of the contract, that become payable prior to the end of the respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in the contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of the contracts to determine nonforfeiture values.

**56-1-909. Minimum reserves.**

(a) In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after March 13, 1978, be less than the aggregate reserves calculated in accordance with the methods set forth in §§ 56-1-907, 56-1-908, 56-1-911 and 56-1-912 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for the policies.

(b) In no event shall the aggregate reserves for all policies, contracts and

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benefits be less than the aggregate reserves determined by the appointed actuary to be necessary to render the opinion required by § 56-1-903.

**56-1-910. Optional reserve calculation.**

(a) Reserves for policies and contracts issued prior to March 13, 1978, may be calculated, at the option of the company, according to any standards that produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to March 13, 1978.

(b) Reserves for any category of policies, contracts or benefits established by the commissioner, issued on or after March 13, 1978, may be calculated, at the option of the company, according to any standards that produce greater aggregate reserves for the category than those calculated according to the minimum standard provided in this part, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be greater than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided in the policies or contracts.

(c) A company, which adopts at any time a standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided under this part may adopt a lower standard of valuation with the approval of the commissioner, but not lower than the minimum provided herein; provided that, for the purposes of this section, the holding of additional reserves previously determined by the appointed actuary to be necessary to render the opinion required by § 56-1-903 shall not be deemed to be the adoption of a higher standard of valuation.

**56-1-911. Reserve calculation — Valuation net premium exceeding the gross premium charged.**

(a) If in any contract year the gross premium charged by a company on a policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for the policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest and method actually used for the policy or contract; or the reserve calculated by the method actually used for the policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in §§ 56-1-904 and 56-1-906.

(b) For a life insurance policy issued on or after January 1, 1986, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and which provides an endowment benefit or a cash surrender value, or a combination, in an amount greater than the excess premium, subsection (a) shall be applied as if the method actually used in calculating the reserve for the policy were the method described in § 56-1-907, without consideration of § 56-1-907(b). The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance

with § 56-1-907, including 56-1-907(b), and the minimum reserve calculated in accordance with this section.

**56-1-912. Reserve calculation — Indeterminate premium plans.**

In the case of a plan of life insurance that provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of a plan of life insurance or annuity that is of such a nature that the minimum reserves cannot be determined by the methods described in §§ 56-1-907, 56-1-908 and 56-1-911, the reserves that are held under the plan shall, as determined by regulations promulgated by the commissioner:

- (1) Be appropriate in relation to the benefits and the pattern of premiums for that plan; and
- (2) Be computed by a method that is consistent with the principles of this part.

**56-1-913. Minimum standard for accident and health insurance contracts.**

(a) For accident and health insurance contracts issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under § 56-1-902(b).

(b) For disability, accident and sickness, accident and health insurance contracts issued on or after January 1, 1962, and prior to the operative date of the valuation manual, the minimum standard of valuation is the standard adopted by the commissioner by regulation.

**56-1-914. Valuation manual for policies issued on or after the operative date of the valuation manual.**

(a) For policies issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under § 56-1-902(b), except as provided under subsections (e) or (g).

(b) The operative date of the valuation manual is January 1 of the first calendar year following the first July 1 as of which all of the following have occurred:

(1) The valuation manual has been adopted by the NAIC by an affirmative vote of at least forty-two (42) members, or three-fourths ( $\frac{3}{4}$ ) of the members voting, whichever is greater;

(2) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by states representing greater than seventy-five percent (75%) of the direct premiums written as reported in the following annual statements submitted for 2008: life, accident and health annual statements; health annual statements; or fraternal annual statements;

(3) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by at least forty-two (42) of the following fifty-five (55) jurisdictions: The fifty (50) states of the United States, American Samoa, the American

Virgin Islands, the District of Columbia, Guam and Puerto Rico.

(c) Unless a change in the valuation manual specifies a later effective date, changes to the valuation manual shall be effective on January 1 following the date when the change to the valuation manual has been adopted by the NAIC by an affirmative vote representing:

(1) At least three-fourths ( $\frac{3}{4}$ ) of the members of the NAIC voting, but not less than a majority of the total membership; and

(2) Members of the NAIC representing jurisdictions totaling greater than seventy-five percent (75%) of the direct premiums written as reported in the following annual statements most recently available prior to the vote in subdivision (c)(1): life, accident and health annual statements, health annual statements or fraternal annual statements.

(d) The valuation manual shall specify all of the following:

(1) Minimum valuation standards for and definitions of the policies or contracts subject to § 56-1-902(b). Such minimum valuation standards shall be:

(A) The commissioner's reserve valuation method for life insurance contracts, other than annuity contracts, subject to § 56-1-902(b);

(B) The commissioner's annuity reserve valuation method for annuity contracts subject to § 56-1-902(b); and

(C) Minimum reserves for all other policies or contracts subject to § 56-1-902(b);

(2) Which policies or contracts or types of policies or contracts that are subject to the requirements of a principle-based valuation in § 56-1-915(a) and the minimum valuation standards consistent with those requirements;

(3) For policies and contracts subject to a principle-based valuation under § 56-1-915:

(A) Requirements for the format of reports to the commissioner under § 56-1-915(b)(2) and which shall include information necessary to determine if the valuation is appropriate and in compliance with this part;

(B) Assumptions shall be prescribed for risks over which the company does not have significant control or influence; and

(C) Procedures for corporate governance and oversight of the actuarial function, and a process for appropriate waiver or modification of such procedures;

(4) For policies not subject to a principle-based valuation under § 56-1-915, the minimum valuation standard shall either:

(A) Be consistent with the minimum standard of valuation prior to the operative date of the valuation manual; or

(B) Develop reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring;

(5) Other requirements, including, but not limited to, those relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, risk measurement, disclosure, certifications, reports, actuarial opinions and memorandums, transition rules and internal controls; and

(6) The data and form of the data required under § 56-1-916, with whom the data must be submitted, and may specify other requirements including data analyses and reporting of analyses.

(e) In the absence of a specific valuation requirement or if a specific

valuation requirement in the valuation manual is not, in the opinion of the commissioner, in compliance with this part, then the company shall, with respect to such requirements, comply with minimum valuation standards prescribed by the commissioner by regulation.

(f) The commissioner may engage a qualified actuary, at the expense of the company, to perform an actuarial examination of the company and opine on the appropriateness of any reserve assumption or method used by the company, or to review and opine on a company's compliance with any requirement set forth in this part. The commissioner may rely upon the opinion, regarding provisions contained within this part, of a qualified actuary engaged by the commissioner of another state, district or territory of the United States. As used in this subsection (f), "engage" includes employment and contracting.

(g) The commissioner may require a company to change any assumption or method that in the opinion of the commissioner is necessary in order to comply with the requirements of the valuation manual or this part; and the company shall adjust the reserves as required by the commissioner. The commissioner may take other disciplinary action as permitted pursuant to § 56-2-305 and the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

#### **56-1-915. Requirements of a principle-based valuation.**

(a) A company shall establish reserves using a principle-based valuation that meets the following conditions for policies or contracts as specified in the valuation manual:

(1) Quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the contracts. For policies or contracts with significant tail risk, reflects conditions appropriately adverse to quantify the tail risk;

(2) Incorporate assumptions, risk analysis methods and financial models and management techniques that are consistent with, but not necessarily identical to, those utilized within the company's overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods;

(3) Incorporate assumptions that are derived in one (1) of the following manners:

(A) The assumption is prescribed in the valuation manual;

(B) For assumptions that are not prescribed, the assumptions shall:

(i) Be established utilizing the company's available experience to the extent it is relevant and statistically credible; or

(ii) To the extent that company data is not available, relevant, or statistically credible, be established utilizing other relevant, statistically credible experience;

(4) Provide margins for uncertainty including adverse deviation and estimation error, such that the greater the uncertainty the larger the margin and resulting reserve.

(b) A company using a principle-based valuation for one (1) or more policies or contracts subject to this section as specified in the valuation manual shall:

(1) Establish procedures for corporate governance and oversight of the actuarial valuation function consistent with those described in the valuation

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manual;

(2) Provide to the commissioner and the board of directors an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. Such controls shall be designed to assure that all material risks inherent in the liabilities and associated assets subject to such valuation are included in the valuation, and that valuations are made in accordance with the valuation manual. The certification shall be based on the controls in place as of the end of the preceding calendar year;

(3) Develop, and file with the commissioner upon request, a principle-based valuation report that complies with standards prescribed in the valuation manual.

(c) A principle-based valuation may include a prescribed formulaic reserve component.

**56-1-916. Experience reporting for policies in force on or after the operative date of the valuation manual.**

A company shall submit mortality, morbidity, policyholder behavior, or expense experience and other data as prescribed in the valuation manual.

**56-1-917. Confidentiality.**

(a) For purposes of this section, "confidential information" means:

(1) A memorandum in support of an opinion submitted under § 56-1-903 and any other documents, materials and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in connection with such memorandum;

(2) All documents, materials and other information, including, but not limited to, all working papers and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in the course of an examination made under § 56-1-914(f); provided, however, that if an examination report or other material prepared in connection with an examination made under § 56-1-411 is not held as private and confidential information under § 56-1-411, an examination report or other material prepared in connection with an examination made under § 56-1-914(f) shall not be confidential information to the same extent as if such examination report or other material had been prepared under § 56-1-411;

(3) Any reports, documents, materials and other information developed by a company in support of, or in connection with, an annual certification by the company under § 56-1-915(b)(2) evaluating the effectiveness of the company's internal controls with respect to a principle-based valuation and any other documents, materials and other information, including, but not limited to, all working papers and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in connection with such reports, documents, materials and other information;

(4) Any principle-based valuation report developed under § 56-1-915(b)(3) and any other documents, materials and other information, including, but not limited to, all working papers and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in connection with such report; and

(5) Any documents, materials, data and other information submitted by a company under § 56-1-916, collectively, experience data, and any other

documents, materials, data and other information, including, but not limited to, all working papers, and copies thereof, created or produced in connection with such experience data, in each case that include any potentially company-identifying or personally identifiable information, that is provided to or obtained by the commissioner (together with any experience data, the experience materials) and any other documents, materials, data and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in connection with such experience materials.

(b) For privilege for, and confidentiality of, confidential information:

(1) Except as provided in this section, a company's confidential information is confidential by law and privileged, and shall not be subject to § 10-7-503 or § 56-1-602, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action; provided, however, that the commissioner is authorized to use the confidential information in the furtherance of any regulatory or legal action brought against the company as a part of the commissioner's official duties;

(2) Neither the commissioner nor any person who received confidential information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential information;

(3) In order to assist in the performance of the commissioner's duties, the commissioner may share confidential information:

(A) With other state, federal and international regulatory agencies and with the NAIC and its affiliates and subsidiaries;

(B) In the case of confidential information specified in subdivisions (a)(1) and (4) only, with the Actuarial Board for Counseling and Discipline or its successor upon request stating that the confidential information is required for the purpose of professional disciplinary proceedings and with state, federal and international law enforcement officials; and

(C) Provided that such recipient agrees, and has the legal authority to agree, to maintain the confidentiality and privileged status of such documents, materials, data and other information in the same manner and to the same extent as required for the commissioner;

(4) The commissioner may receive documents, materials, data and other information, including otherwise confidential and privileged documents, materials, data or information, from the NAIC and its affiliates and subsidiaries, from regulatory or law enforcement officials of other foreign or domestic jurisdictions and from the Actuarial Board for Counseling and Discipline or its successor and shall maintain as confidential or privileged any document, material, data or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information;

(5) The commissioner may enter into agreements governing sharing and use of information consistent with this subsection (b);

(6) No waiver of any applicable privilege or claim of confidentiality in the confidential information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subdivision (b)(3);

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(7) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection (b) shall be available and enforced in any proceeding in, and in any court of, this state;

(8) In this section, “regulatory agency,” “law enforcement agency” and “NAIC” include, but are not limited to, their employees, agents, consultants and contractors.

(c) Notwithstanding subsection (b), any confidential information specified in subdivisions (a)(1) and (4):

(1) May be subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under § 56-1-903 or principle-based valuation report developed under § 56-1-915(b)(3) by reason of an action required pursuant to this part or by regulations promulgated by the commissioner;

(2) May otherwise be released by the commissioner with the written consent of the company; and

(3) Once any portion of a memorandum in support of an opinion submitted under § 56-1-903 or a principle-based valuation report developed under § 56-1-915(b)(3) is cited by the company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of such memorandum or report shall no longer be confidential.

#### **56-1-918. Single state exemption.**

(a) The commissioner may exempt specific product forms or product lines of a domestic company that is licensed and doing business only in this state from § 56-1-914; provided, that:

(1) The commissioner has issued an exemption in writing to the company and has not subsequently revoked the exemption in writing; and

(2) The company computes reserves using assumptions and methods used prior to the operative date of the valuation manual in addition to any requirements established by the commissioner and promulgated by regulation.

(b) For any company granted an exemption under this section, §§ 56-1-903 — 56-1-913 shall be applicable. With respect to any company applying this exemption, any reference to § 56-1-914 found in §§ 56-1-903 — 56-1-913 shall not be applicable.

#### **56-1-919. Effective date.**

To the extent that this part conflicts with or is inconsistent with any law, this part shall control. This part shall apply to policies and contracts issued on or after January 1, 1962.

#### **56-2-104. Contents of statement — Deposits.**

(a) Any domestic company shall satisfy the commissioner that:

(1) It is fully and legally organized under the laws of this state to do the business it proposes to transact;

(2)(A) If it is a stock life insurance company or a mutual life insurance company, it has and will maintain on deposit with the state treasurer, or

with such other officer designated by law, at least two hundred thousand dollars (\$200,000) in cash or its equivalent; but the commissioner may, in the commissioner's discretion, accept as an equivalent bonds of the United States, or any agency or instrumentality of the United States, which have been included in the three (3) highest grades by any of the recognized securities rating firms, bonds of this state, bonds of the state of domicile, or bonds publicly issued by any solvent institution created or existing under the laws of the United States or any state of the United States, which have been included in the three (3) highest grades by any of the recognized securities rating firms;

(B) Notwithstanding subdivision (a)(2)(A), the commissioner may decline to accept as a deposit any specific issue of securities that the commissioner has determined may not provide the necessary protection to policyholders and creditors in the United States;

(3)(A) The company shall likewise be required to file with the commissioner the certificate of the official with whom the securities are deposited, stating the time and amount of bonds of the United States, or any agency or instrumentality of the United States, which have been included in the three (3) highest grades by any of the recognized securities rating firms, bonds of this state, bonds of the state of domicile, or bonds publicly issued by any solvent institution created or existing under the laws of the United States or any state, which have been included in the three (3) highest grades by any of the recognized securities rating firms, and that the commissioner is satisfied they are worth two hundred thousand dollars (\$200,000), and that the deposit was made with the commissioner by the company for the protection of all policyholders and creditors in the United States;

(B) Notwithstanding subdivision (a)(3)(A), the commissioner may decline to accept as a deposit any specific issue of securities that the commissioner has determined may not provide the necessary protection to policyholders and creditors in the United States;

(4)(A) If the applicant is an insurance company other than a stock or mutual life insurance company, each company shall maintain on deposit at least one hundred thousand dollars (\$100,000) in cash or its equivalent for each kind or class of insurance as defined in § 56-2-201; but the commissioner, in the commissioner's discretion, may accept as an equivalent bonds of the United States, or any agency or instrumentality of the United States, which have been included in the three (3) highest grades by any of the recognized securities rating firms, bonds of this state, bonds of the state of domicile, or bonds publicly issued by any solvent institution created or existing under the laws of the United States or any state, which have been included in the three (3) highest grades by any of the recognized securities rating firms;

(B) Notwithstanding subdivision (a)(4)(A), the commissioner may decline to accept as a deposit any specific issue of securities that the commissioner has determined may not provide the necessary protection to policyholders and creditors in the United States. The deposits shall be subject to the same conditions as required in the case of stock or mutual life insurance companies; and

(5)(A) The insurer's principal place of business and primary executive, administrative and home offices are or will be located and maintained in this state. This subdivision (a)(5)(A) also applies to domestic health

maintenance organizations. This subdivision (a)(5)(A) does not apply to:

(i) Any insurer that was a domestic insurer prior to July 1, 1993, and whose primary executive, administrative and home offices were located outside of the state prior to July 1, 1993; or

(ii) [Deleted by 2013 amendment.]

(iii) [Deleted by 2013 amendment.]

(iv) Any domestic reciprocal whose primary executive, administrative and home offices, and original books and records, were located and maintained outside the state prior to January 1, 1996;

(B) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority of a domestic company found to be in violation of subdivision (a)(5)(A).

(b)(1) The deposit required by this section is not applicable to foreign stock or mutual life insurance companies, or to domestic or foreign insurance companies writing workers' compensation insurance or fidelity and surety bonds. Companies writing that type or form of insurance shall make deposits in accordance with the requirements of existing laws.

(2) The provisions of this section applicable to domestic insurance companies shall apply to all insurance companies and associations except those specifically exempted in this section, whether the companies are stock or mutual, and it is specifically provided that §§ 56-2-101 — 56-2-103, this section, §§ 56-2-113 — 56-2-115, 56-2-201, and 56-2-301 fully apply to all such companies or associations regardless of what law or statute of this state under which the companies or associations may have been organized.

(3) No requirement in this section not in effect on January 1, 1967, shall be considered applicable to any insurance company properly licensed to transact business in this state as of that date, except that any stock casualty company, foreign or domestic, not having at least one hundred thousand dollars (\$100,000) in cash or equivalent on deposit for each kind of insurance as defined in § 56-2-201, shall meet the requirement by December 31, 1978. Domestic stock casualty companies not maintaining capital paid up of at least one hundred thousand dollars (\$100,000) shall make a deposit equal to their capital paid up by December 31, 1977.

(4) This section shall not apply to, or affect, or be construed as in anywise applying to, or affecting, domestic state and county mutual fire insurance companies, the organization of which was and is authorized by chapters 19-21 of this title.

(c) [Deleted by 2012 amendment.]

**56-2-201. Definitions of kinds of insurance. [Effective from May 16, 2013, until December 31, 2016. See the version effective until May 16, 2013, and after December 31, 2016.]**

*Kinds of insurance are defined as follows:*

(1) "Accident and health insurance" means insurance against bodily injury, disablement or death, by accident or accidental means, or the expense of bodily injury, disablement or death, against disablement or expense resulting from sickness, and every insurance pertaining thereto; providing for the mental and emotional welfare of an individual and members of the individual's family by defraying the cost of legal services; or providing aggregate or excess stop-loss coverage in connection with employee welfare

*benefit plans, managed care organizations participating in commercial plans or the TennCare program, or both, health maintenance organizations, long-term care facilities, physician-hospital organizations as defined in § 56-32-102 and provider aggregate or per-patient stop-loss protection insurance coverage as authorized by § 56-32-104;*

*(2) "Casualty insurance" includes vehicle insurance, disability insurance, and in addition is:*

*(A) "Boiler insurance," which is insurance against any liability and loss or damage to property resulting from accidents to or explosion of boilers, pipes, pressure containers, machinery, or apparatus, and to make inspection of and issue certificates of inspection upon boilers, machinery and apparatus of any kind, whether or not insured;*

*(B) "Burglary and theft insurance," which is insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation or wrongful conversion, disposal or concealment, or from any attempt of burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation or wrongful conversion, disposal or concealment; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances or any other valuable papers or documents, resulting from any cause, except while in the custody or possession of and being transported by any carrier for hire or in the mail;*

*(C) "Collision insurance," which is insurance against loss of or damage to any property of the insured resulting from collision of any other object with the property, but not including collision to or by elevators, or to or by vessels, craft, piers or other instrumentalities of ocean or inland navigation;*

*(D) "Credit insurance," which is insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured;*

*(E) "Elevator insurance," which is insurance against loss or damage to any property of the insured resulting from the ownership, maintenance or use of elevators, except loss or damage by fire, and to make inspection of and issue certificates of inspection on elevators;*

*(F) "Glass insurance," which is insurance against loss of or damage to glass and its appurtenances resulting from any cause;*

*(G) "Liability insurance," which is insurance against legal liability for the death, injury, or disability of any person, or for damage to property; and insurance of medical, hospital, surgical and funeral benefits to persons injured, regardless of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance;*

*(H) "Livestock insurance," which is insurance against loss of or damage to any domesticated or wild animal resulting from any cause;*

*(I) "Personal property floater," which is insurance of individuals, by an all-risk type of policy commonly known as the "personal property floater," against any and all kinds of loss of or damage to, or loss of use of, any personal property other than merchandise;*

*(J) "Professional liability insurance," which is insurance against legal liability of the insured, and against loss, damage or expense incident to a claim of legal liability, and including any obligation of the insured to pay medical, hospital, surgical and funeral benefits to injured persons, regardless of legal liability of the insured, arising out of the death or injury of any person, or arising out of injury to the economic interest of any person as the*

*result of negligence in rendering expert, fiduciary or professional service;*

*(K) "Water insurance," which is insurance against loss of or damage to any property caused by the breakage or leakage of sprinklers, water pipes and other apparatus, or by water entering through leaks or openings in buildings, other than flood waters;*

*(L) "Workers' compensation and employer's liability insurance," which is insurance of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury of employees; and*

*(M) Insurance against any other kind of loss, damage, or liability properly the subject of insurance and not within any other kind or kinds of insurance as defined in this section, if the insurance is not disapproved by the commissioner as being contrary to law or public policy;*

*(3) "Credit insurance" includes:*

*(A) "Credit accident and health insurance," which means that form of insurance under which a borrower of money or a purchaser of goods is indemnified in connection with a specific loan or credit transaction against loss of time resulting from accident or sickness; and*

*(B) "Credit life insurance," which means that form of insurance under which the life of a borrower of money or a purchaser of goods is insured in connection with a specified loan or credit transaction;*

*(4) "Life insurance" means insurance on human lives and insurance appertaining to human lives or connected with human lives. For the purposes of this title, the transacting of life insurance includes the granting of annuities, both with and without a life or mortality contingency or element, and endowment benefits, additional benefits in the event of death by accident or accidental means, additional benefits in the event of the total and permanent disability of the insured, and optional modes of settlement of proceeds;*

*(5)(A) "Property insurance" means insurance against loss of or damage to real or personal property of every kind and interest in the real or personal property, from any or all hazards or causes, and against loss consequential upon the loss or damage;*

*(B) "Property insurance" includes, but is not limited to:*

*(i) Insurance against loss or damage to property and loss of use and occupancy by fire, lightning, storm, flood, frost, freezing, snow, hail, ice, weather or climatic conditions, including excess or deficiency of moisture, rain or rising of the waters of the ocean or its tributaries, drought, insects, vermin, forces of nature, smoke, smudge, riot, riot attending strike, strikes, sabotage, civil commotion, vandalism or malicious mischief or caused by wrongful conversion, disposal or concealment of a motor vehicle or aircraft, whether or not handled under a conditional sales contract or subject to chattel mortgage, civil war, rebellion, insurrection, invasion, bombardment, military or usurped power, or by any order of civil authorities meant to prevent the spread of conflagration or epidemic or catastrophe, explosion with no fire ensuing, except explosion by steam boilers or flywheels, but there may be insured explosion of pressure vessels, not including steam boilers of more than fifteen pounds (15 lbs.) pressure, in buildings designed and used solely for residential purposes by not more than four (4) families, explosion of any kind originating outside the insured building, or outside the building containing the property insured, and explosion of pressure vessels that do not*

*contain steam or that are not operated with steam coils or steam jackets;*

*(ii) Insurance against loss or damage by insects or disease to farm crops or products, and loss of rental value of land used in producing the crops or products;*

*(iii) Insurance against accidental injury to sprinklers, pumps, water pipes, elevator tanks and cylinders, steam pipes and radiators, plumbing and its fixtures, ventilating, refrigerating, heating, lighting or cooking apparatus, or their connections, or conduits or containers of any gas, fluid, or other substance, and against loss or damage to property of the insured caused by the breakage or leakage thereof, or by water, hail, rain, sleet or snow seeping or entering through water pipes, leaks or openings in buildings;*

*(iv) Insurance against loss or damage caused by railroad equipment, motor vehicles, airplanes, seaplanes, dirigibles or other aircraft;*

*(v) Insurance against loss of or damage to vessels, crafts, aircrafts, cars, automobiles and vehicles of every kind, as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidence of debt, valuable papers, bottomry and respondentia interests therein, in respect to, appertaining to or in connection with, any and all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the being assembled, packed, crated, baled, compressed or similarly prepared for shipment or during any delays, storage, transshipment incident thereto, including marine builder's risks and all personal property floater risks, and persons or property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of the insurance, but not including life insurance or surety bonds, and precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade, or otherwise, and whether in course of transportation or otherwise, and bridges, tunnels and other instrumentalities of transportation, and communication, excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage, unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and /or civil commotion, are the only hazards to be covered, and piers, wharves, docks and ships, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and /or civil commotion, and other aids to navigation and transportation, including dry docks and marine railways, against all risks;*

*(vi) "Marine protection and indemnity insurance," which means insurance against, or against legal liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person; and*

*(vii) Vehicle insurance;*

*(C) Matters set out in subdivision (5)(B) are not deemed to limit the scope of property insurance as defined in subdivision (5)(A), nor shall the fact that certain coverages coming within the scope of property insurance, as defined in subdivision (5)(A), are also defined as part of another kind of insurance be deemed to limit the scope of the definition of property insurance or the right of a property insurer to provide the coverage;*

*(6) "Surety insurance" includes:*

*(A) Credit insurance;*

*(B) "Fidelity insurance," which is insurance guaranteeing the fidelity of persons holding positions of public or private trust;*

*(C) Guaranteeing the performance of contracts, and guaranteeing and executing bonds, undertakings, and contracts of suretyship;*

*(D) Indemnifying banks, bankers, brokers, financial or moneyed corporations or associations or other persons against loss, resulting from any cause, of bills of exchange, notes, bonds, securities, evidences of debts, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals and articles made from precious metals, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, including any loss while the items are being transported in armored motor vehicles, or by messenger, but not including any other risks of transportation or navigation; also against loss or damage to the insured's premises, or to the insured furnishings, fixtures, equipment, safes and vaults in safes, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt of burglary, robbery, theft, vandalism or malicious mischief; and*

*(E) Insurance that guarantees the performance of any debt obligation of a public or private corporation; and*

*(7)(A) "Vehicle insurance" means insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon, or being loaded or unloaded therein or therefrom, and against any loss, expense or liability for loss or damage to persons or property resulting from or incident to ownership, maintenance, or use of the vehicle or aircraft or animal;*

*(B) Insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft, or draft or riding animal, if the insurance is issued as part of insurance on the vehicle, aircraft, or draft or riding animal, shall be deemed to be vehicle insurance.*

**56-2-201. Definitions of kinds of insurance. [Effective until May 16, 2013, and after December 31, 2016. See the version effective from May 16, 2013, until December 31, 2016.]**

Kinds of insurance are defined as follows:

(1) "Accident and health insurance" means insurance against bodily injury, disablement or death, by accident or accidental means, or the expense of bodily injury, disablement or death, against disablement or expense resulting from sickness, and every insurance pertaining thereto; providing for the mental and emotional welfare of an individual and members of the individual's family by defraying the cost of legal services; or providing aggregate or excess stop-loss coverage in connection with employee welfare

benefit plans, managed care organizations participating in commercial plans or the TennCare program, or both, health maintenance organizations, long-term care facilities and physician-hospital organizations as defined in § 56-32-102;

(2) "Casualty insurance" includes vehicle insurance, disability insurance, and in addition is:

(A) "Boiler insurance," which is insurance against any liability and loss or damage to property resulting from accidents to or explosion of boilers, pipes, pressure containers, machinery, or apparatus, and to make inspection of and issue certificates of inspection upon boilers, machinery and apparatus of any kind, whether or not insured;

(B) "Burglary and theft insurance," which is insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation or wrongful conversion, disposal or concealment, or from any attempt of burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation or wrongful conversion, disposal or concealment; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances or any other valuable papers or documents, resulting from any cause, except while in the custody or possession of and being transported by any carrier for hire or in the mail;

(C) "Collision insurance," which is insurance against loss of or damage to any property of the insured resulting from collision of any other object with the property, but not including collision to or by elevators, or to or by vessels, craft, piers or other instrumentalities of ocean or inland navigation;

(D) "Credit insurance," which is insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured;

(E) "Elevator insurance," which is insurance against loss or damage to any property of the insured resulting from the ownership, maintenance or use of elevators, except loss or damage by fire, and to make inspection of and issue certificates of inspection on elevators;

(F) "Glass insurance," which is insurance against loss of or damage to glass and its appurtenances resulting from any cause;

(G) "Liability insurance," which is insurance against legal liability for the death, injury, or disability of any person, or for damage to property; and insurance of medical, hospital, surgical and funeral benefits to persons injured, regardless of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance;

(H) "Livestock insurance," which is insurance against loss of or damage to any domesticated or wild animal resulting from any cause;

(I) "Personal property floater," which is insurance of individuals, by an all-risk type of policy commonly known as the "personal property floater," against any and all kinds of loss of or damage to, or loss of use of, any personal property other than merchandise;

(J) "Professional liability insurance," which is insurance against legal liability of the insured, and against loss, damage or expense incident to a claim of legal liability, and including any obligation of the insured to pay medical, hospital, surgical and funeral benefits to injured persons, regardless of legal liability of the insured, arising out of the death or injury of any person, or arising out of injury to the economic interest of any person as the result of negligence in rendering expert, fiduciary or professional

service;

(K) "Water insurance," which is insurance against loss of or damage to any property caused by the breakage or leakage of sprinklers, water pipes and other apparatus, or by water entering through leaks or openings in buildings, other than flood waters;

(L) "Workers' compensation and employer's liability insurance," which is insurance of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury of employees; and

(M) Insurance against any other kind of loss, damage, or liability properly the subject of insurance and not within any other kind or kinds of insurance as defined in this section, if the insurance is not disapproved by the commissioner as being contrary to law or public policy;

(3) "Credit insurance" includes:

(A) "Credit accident and health insurance," which means that form of insurance under which a borrower of money or a purchaser of goods is indemnified in connection with a specific loan or credit transaction against loss of time resulting from accident or sickness; and

(B) "Credit life insurance," which means that form of insurance under which the life of a borrower of money or a purchaser of goods is insured in connection with a specified loan or credit transaction;

(4) "Life insurance" means insurance on human lives and insurance appertaining to human lives or connected with human lives. For the purposes of this title, the transacting of life insurance includes the granting of annuities, both with and without a life or mortality contingency or element, and endowment benefits, additional benefits in the event of death by accident or accidental means, additional benefits in the event of the total and permanent disability of the insured, and optional modes of settlement of proceeds;

(5)(A) "Property insurance" means insurance against loss of or damage to real or personal property of every kind and interest in the real or personal property, from any or all hazards or causes, and against loss consequential upon the loss or damage;

(B) "Property insurance" includes, but is not limited to:

(i) Insurance against loss or damage to property and loss of use and occupancy by fire, lightning, storm, flood, frost, freezing, snow, hail, ice, weather or climatic conditions, including excess or deficiency of moisture, rain or rising of the waters of the ocean or its tributaries, drought, insects, vermin, forces of nature, smoke, smudge, riot, riot attending strike, strikes, sabotage, civil commotion, vandalism or malicious mischief or caused by wrongful conversion, disposal or concealment of a motor vehicle or aircraft, whether or not handled under a conditional sales contract or subject to chattel mortgage, civil war, rebellion, insurrection, invasion, bombardment, military or usurped power, or by any order of civil authorities meant to prevent the spread of conflagration or epidemic or catastrophe, explosion with no fire ensuing, except explosion by steam boilers or flywheels, but there may be insured explosion of pressure vessels, not including steam boilers of more than fifteen pounds (15 lbs.) pressure, in buildings designed and used solely for residential purposes by not more than four (4) families, explosion of any kind originating outside the insured building, or outside the building containing the property insured, and explosion of pressure vessels that do not contain steam or that are not operated with steam

coils or steam jackets;

(ii) Insurance against loss or damage by insects or disease to farm crops or products, and loss of rental value of land used in producing the crops or products;

(iii) Insurance against accidental injury to sprinklers, pumps, water pipes, elevator tanks and cylinders, steam pipes and radiators, plumbing and its fixtures, ventilating, refrigerating, heating, lighting or cooking apparatus, or their connections, or conduits or containers of any gas, fluid, or other substance, and against loss or damage to property of the insured caused by the breakage or leakage thereof, or by water, hail, rain, sleet or snow seeping or entering through water pipes, leaks or openings in buildings;

(iv) Insurance against loss or damage caused by railroad equipment, motor vehicles, airplanes, seaplanes, dirigibles or other aircraft;

(v) Insurance against loss of or damage to vessels, crafts, aircrafts, cars, automobiles and vehicles of every kind, as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidence of debt, valuable papers, bottomry and respondentia interests therein, in respect to, appertaining to or in connection with, any and all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the being assembled, packed, crated, baled, compressed or similarly prepared for shipment or during any delays, storage, transshipment incident thereto, including marine builder's risks and all personal property floater risks, and persons or property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of the insurance, but not including life insurance or surety bonds, and precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade, or otherwise, and whether in course of transportation or otherwise, and bridges, tunnels and other instrumentalities of transportation, and communication, excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage, unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion, are the only hazards to be covered, and piers, wharves, docks and ships, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion, and other aids to navigation and transportation, including dry docks and marine railways, against all risks;

(vi) "Marine protection and indemnity insurance," which means insurance against, or against legal liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person; and

(vii) Vehicle insurance;

(C) Matters set out in subdivision (5)(B) are not deemed to limit the scope of property insurance as defined in subdivision (5)(A), nor shall the fact that certain coverages coming within the scope of property insurance, as defined in subdivision (5)(A), are also defined as part of another kind of insurance be deemed to limit the scope of the definition of property insurance or the right of a property insurer to provide the coverage;

(6) "Surety insurance" includes:

(A) Credit insurance;

(B) "Fidelity insurance," which is insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(C) Guaranteeing the performance of contracts, and guaranteeing and executing bonds, undertakings, and contracts of suretyship;

(D) Indemnifying banks, bankers, brokers, financial or moneyed corporations or associations or other persons against loss, resulting from any cause, of bills of exchange, notes, bonds, securities, evidences of debts, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals and articles made from precious metals, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, including any loss while the items are being transported in armored motor vehicles, or by messenger, but not including any other risks of transportation or navigation; also against loss or damage to the insured's premises, or to the insured furnishings, fixtures, equipment, safes and vaults in safes, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt of burglary, robbery, theft, vandalism or malicious mischief; and

(E) Insurance that guarantees the performance of any debt obligation of a public or private corporation; and

(7)(A) "Vehicle insurance" means insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon, or being loaded or unloaded therein or therefrom, and against any loss, expense or liability for loss or damage to persons or property resulting from or incident to ownership, maintenance, or use of the vehicle or aircraft or animal;

(B) Insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft, or draft or riding animal, if the insurance is issued as part of insurance on the vehicle, aircraft, or draft or riding animal, shall be deemed to be vehicle insurance.

#### **56-2-407. Revocation of authority of foreign companies.**

The authority of a foreign insurance company may be revoked:

(1) If it violates or neglects to comply with any law obligatory upon it;

(2) Whenever, in the opinion of the commissioner, its condition is unsound, or its assets above its liabilities exclusive of capital and inclusive of unearned premiums, as provided in §§ 56-1-402 — 56-1-405 [see the Compiler's Notes], are less than the amount of its original capital or required unimpaired funds; or

(3) If any foreign company licensed to transact business in this state reinsures or accepts reinsurance on property located in this state for any

company not authorized to transact the business of insurance in this state; provided, that § 56-1-102 does not apply to foreign marine policies.

**56-6-104. Exceptions to licensing.**

(a) Nothing in this part shall be construed to require an insurer to obtain an insurance producer license. In this section, the term “insurer” does not include an insurer’s officers, directors, employees, subsidiaries or affiliates.

(b) A license as an insurance producer shall not be required of the following:

(1) An officer, director or employee of an insurer or of an insurance producer; provided, that the officer, director or employee does not receive any commission on policies written or sold to insure risks residing, located or to be performed in this state and:

(A) The officer, director or employee’s activities are executive, administrative, managerial, clerical or a combination of these, and are only indirectly related to the sale, solicitation or negotiation of insurance;

(B) The officer, director or employee’s function relates to underwriting, loss control, inspection or the processing, adjusting, investigating or settling of a claim on a contract of insurance; or

(C) The officer, director or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person’s activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation or negotiation of insurance;

(2) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance; or for the purpose of enrolling individuals under plans, issuing certificates under plans or otherwise assisting in administering plans, or performs administrative services related to mass marketed property and casualty insurance, where no commission is paid to the person for the service;

(3) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, director or trustees are engaged in the administration or operation of a program of employee benefits for the employer’s or association’s own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;

(4) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating or classification of risks, or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation or negotiation of insurance;

(5) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state; provided, that the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this state;

(6) A person who is not a resident of this state who sells, solicits or negotiates a contract of insurance for commercial property and casualty

risks to an insured with risks located in more than one state insured under that contract; provided, that the person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state;

(7) A salaried full-time employee who counsels or advises an employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer; provided, that the employee does not sell or solicit insurance or receive a commission;

(8) Any regular salaried officer, employee or member of a fraternal benefit society that provides benefits in case of death or disability, resulting solely from accident, and that does not obligate the officer, employee or member to pay natural death or sick benefits, the officers, employees or members procuring other members and receiving no compensation for the procurement other than awards or merchandise nominal in value;

(9) An officer, director, or employee of a vehicle rental company engaged in the sale, solicitation, or negotiation of optional insurance sold in connection with and incidental to a motor vehicle rental agreement for a period not to exceed ninety (90) days;

(A) The insurance that may be offered pursuant to this subdivision (b)(9) is limited to:

(i) Personal accident coverage that provides protection for renters and other rental vehicle occupants for accidental death or dismemberment, and for medical expenses resulting from an accident that occurs during the rental period;

(ii) Liability coverage that provides protection to renters and to other authorized drivers of the rental motor vehicle for liability arising from the operation of the motor vehicle during the rental period. The liability protection, when purchased by a renter, shall be deemed to be primary over any other coverages that may be available to the renter or other authorized driver of the rental vehicle to the extent of the protection provided;

(iii) Personal effects coverage that provides protection to renters and other motor vehicle occupants for loss of, or damage to, personal effects in the rental motor vehicle during the rental period; and

(iv) Roadside assistance coverage;

(B) As used in subdivision (b)(9)(A), "motor vehicle" or "rental vehicle" means a private passenger motor vehicle, including passenger vans, mini vans, and sport utility vehicles, and a cargo motor vehicle, including cargo vans, pickup trucks, and trucks with a gross vehicle weight of less than twenty-six thousand pounds (26,000 lbs.);

(C) Each person engaged in the sale of optional insurance products pursuant to this subdivision (b)(9) shall give each renter who purchases the coverage brochures or other written materials that:

(i) Summarize, clearly and correctly, the material terms and conditions of coverage offered to renters;

(ii) Identify the insurer;

(iii) Describe the process for filing a claim in the event the renter elects to purchase coverage;

(iv) State that the purchase of the coverage is not required in order to rent a vehicle;

(v) Disclose that the coverage offered by the rental agreement may provide a duplication of coverage already provided by a renter's personal automobile policy or by another source of coverage; and

(vi) Itemize the cost for the coverage separately;

(D) The commissioner may seek the sanctions provided in former § 56-6-112(e) [repealed] against a vehicle rental company upon a finding that an officer, director, or employee of a vehicle rental company has violated § 56-6-112(a)(2), (4), (5), (7), (8), or (10) in connection with the sale, solicitation, or negotiation of optional insurance sold in connection with and incidental to a motor vehicle rental agreement for a period not to exceed ninety (90) days;

(10) An officer, director, employee, or authorized representative of a business entity engaged in the sale, solicitation, or negotiation of portable electronics insurance licensed pursuant to and acting in compliance with part 11 of this chapter; or

(11) An officer, director, employee or authorized representative of a business entity engaged in the sale, solicitation or negotiation of self-service storage insurance licensed pursuant to and acting in compliance with part 12 of this chapter.

#### **56-6-110. Limited lines producers.**

An individual who has met the requirements of § 56-6-106 shall be entitled to a limited lines producer license without examination in one (1) or more of the following limited lines:

(1) Insurance on personal effects carried as baggage or limited travel accident insurance sold in connection with transportation provided by a common carrier;

(2) Credit life, credit accident and health insurance, or involuntary unemployment credit insurance;

(3) Mortgage guaranty insurance;

(4) Personal property insurance sold to a debtor under a master group policy issued to a creditor;

(5) Crop hail insurance;

(6) Title insurance; provided, that the limited lines producer is an attorney, duly licensed in this state, who acts as a title insurance agent as an ancillary part of the attorney's practice of law;

(7) Any other lines that the commissioner finds by rule are essential for the transaction of business in this state and do not require the professional competency demanded by an insurance producer's license;

(8) Portable electronics insurance; or

(9) Self-service storage insurance.

#### **56-6-1201. Part definitions.**

For purposes of this part:

(1) "Commissioner" means the commissioner of commerce and insurance or the commissioner's designee;

(2) "Covered personal property" means personal property covered under an occupant's self-service storage insurance policy;

(3) "Department" means the department of commerce and insurance;

(4) "Enrolled occupant" means an occupant who elects coverage under a

self-service storage insurance policy issued to an owner;

(5) "Leased space" means the storage space or spaces at the self-service storage facility that is leased or rented to an occupant pursuant to a rental agreement;

(6) "Location" means any physical location in this state or any web site, or similar location directed to residents of this state;

(7) "Occupant" means a person, or a sublessee, successor or assign of such person, entitled to the use of leased or rented storage space at a self-service storage facility under a rental agreement, to the exclusion of others;

(8) "Owner" means:

(A) The owner, operator, lessor or sublessor of a self-service storage facility, the agent of such person; or

(B) Any person authorized by such person to manage the facility or to receive rent from an occupant under a rental agreement;

(9) "Personal property" means movable property not affixed to land and includes, but is not limited to, goods, wares, merchandise, household items and vehicles;

(10) "Rental agreement" means any agreement or lease, written or oral, that establishes or modifies the terms, conditions, rules or any other provisions concerning the use and occupancy of leased or rented storage space at a self-service storage facility;

(11) "Self-service storage facility":

(A) Means any real property designed and used for the purpose of renting or leasing storage space to occupants who are to have access to such space for the purpose of storing and removing personal property; and

(B) Does not include any part of the real property used for residential purposes;

(12) "Self-service storage insurance":

(A) Means insurance which may provide coverage for the repair or replacement of covered personal property against any one (1) or more of the following causes:

(i) Loss;

(ii) Theft;

(iii) Damage; or

(iv) Other similar causes of loss; and

(B) Does not include a homeowner's, renter's, private passenger automobile, commercial multi-peril or similar policy;

(13) "Self-service storage transaction" means the lease of self-service storage space by an owner to an occupant pursuant to a rental agreement;

(14) "Supervising entity" means a business entity that is a licensed insurance producer or insurer; and

(15) "Vehicle" means a motor vehicle, a trailer or a semitrailer as defined in §§ 55-1-103 and 55-1-105 and a vessel as defined in § 69-9-204.

**56-6-1202. Requirement to hold a limited lines license to sell or offer coverage.**

(a) An owner shall hold a limited lines business entity producer's license to sell or offer coverage under a policy of self-service storage insurance. An owner who complies with this part shall be entitled to a limited lines license, without examination, authorizing the owner to sell or offer coverage under a policy of

self-service storage insurance.

(b) A limited lines license issued to an owner under this section shall authorize any employee or authorized representative of the owner to sell or offer coverage under a policy of self-service storage insurance to an occupant at each location at which the owner engages in self-service storage transactions.

(c) In connection with an owner's initial application for licensure and at renewal, the owner shall provide a list to the commissioner of all locations in this state at which the owner offers coverage.

(d) Notwithstanding any law to the contrary, a license issued pursuant to this section shall authorize the licensee and its employees or authorized representatives to engage in activities permitted in this part.

**56-6-1203. Availability of brochures or other written materials — Offer on periodic basis — Eligibility and underwriting standards.**

(a) At every location where self-service storage insurance is offered to occupants, brochures or other written materials shall be made available that:

(1) Disclose that self-service storage insurance may provide a duplication of coverage already provided by an occupant's homeowner's insurance policy, renter's insurance policy or other source of coverage;

(2) State that the enrollment by the occupant in a self-service storage insurance program is not required in order to lease self-service storage space;

(3) Summarize the material terms of the insurance coverage, including:

(A) The identity of the insurer;

(B) The identity of the supervising entity;

(C) The amount of any applicable deductible and how it is to be paid;

(D) Benefits of the coverage; and

(E) Key terms and conditions of coverage such as whether covered personal property may be repaired or replaced;

(4) Summarize the process for filing a claim; and

(5) State that the enrolled occupant may cancel enrollment for coverage under a self-service storage insurance policy at any time and the person paying the premium shall receive a refund of any applicable unearned premium.

(b) Self-service storage insurance may only be offered or sold on a periodic basis in connection with the rental of leased space at the self-service storage facility on a master, corporate, commercial, group, or individual policy basis and only with respect to personal property insurance that provides coverage to an occupant at the self-service storage facility where the insurance is transacted for the loss of or damage to stored personal property that occurs at such facility.

(c) Eligibility and underwriting standards for occupants electing to enroll in coverage shall be established for each self-service storage insurance program.

**56-6-1204. Employees not subject to licensure under certain conditions.**

(a) Notwithstanding any law to the contrary, the employees and authorized representatives of an owner may sell or offer self-service storage insurance to occupants and shall not be subject to licensure as an insurance producer under

this part; provided, that:

(1) The owner obtains a limited lines license to authorize its employees or authorized representatives to sell or offer self-service storage insurance pursuant to § 56-6-1202;

(2) The insurer issuing the self-service storage insurance either directly supervises or appoints a supervising entity to supervise the administration of the program, including development of a training program for employees and authorized representatives of the owner. The training required by this subdivision (a)(2) shall comply with the following:

(A) The training shall be delivered to employees and authorized representatives of an owner who are directly engaged in the activity of selling or offering self-service storage insurance;

(B) The training may be provided in electronic form. If the training is conducted in an electronic form, the supervising entity shall implement a supplemental education program regarding self-service storage insurance that is conducted and overseen by the supervising entity; and

(C) Each employee and authorized representative shall receive basic instruction concerning the self-service storage insurance offered to customers and the disclosures required under § 56-6-1203;

(3) No employee or authorized representative of an owner of self-service storage space shall advertise, represent or otherwise hold themselves out as a nonlimited lines licensed insurance producer; and

(4) No employee or authorized representative of an owner shall be compensated based primarily on the number of occupants enrolled for self-service storage coverage; provided, however, the employee or authorized representative may receive compensation for activities under the limited lines license which is incidental to overall compensation.

(b)(1) The charge for self-service storage insurance coverage may be assessed and collected by the owner; provided, however, that such charge shall be a separate item within or an addendum to a rental agreement.

(2) Owners assessing and collecting such charges shall not be required to maintain such funds in a segregated account; provided, the owner is authorized by the insurer to hold such funds in a nonsegregated account and remits such amounts to the supervising entity within sixty (60) days of receipt.

(3) All funds received by an owner from an enrolled occupant for the sale of self-service storage insurance shall be considered funds held in trust by the owner in a fiduciary capacity for the benefit of the insurer.

(4) Owners may receive compensation for assessing and collection services.

#### **56-6-1205. Violations.**

If an owner or its employee or authorized representative violates this part, the commissioner is authorized to:

(1) After notice and hearing, impose on a person licensed pursuant to this part civil penalties not to exceed five hundred dollars (\$500) per violation and five thousand dollars (\$5,000) in the aggregate for such conduct; and

(2) After notice and hearing, impose on a person licensed pursuant to this part other penalties that the commissioner deems necessary and reasonable to carry out the purpose of this part, including:

(A) Suspending the privilege of transacting self-service storage insurance pursuant to this part at specific business locations where violations have occurred; and

(B) Suspending or revoking the authority of individual employees or authorized representatives to act under a license issued pursuant to § 56-6-1202.

**56-6-1206. Termination or change in terms and conditions by insurer.**

Notwithstanding any other law to the contrary:

(1) An insurer may terminate or otherwise change the terms and conditions of a policy of self-service storage insurance only upon providing the policyholder and enrolled occupants with at least thirty (30) days written notice;

(2) If the insurer changes the terms and conditions, then the insurer shall provide the owner with a revised policy or endorsement and each enrolled occupant with a revised certificate, endorsement, updated brochure or other evidence indicating a change in the terms and conditions has occurred and a summary of material changes;

(3) Notwithstanding subdivision (1):

(A) An insurer may terminate an enrolled occupant's enrollment under a self-service storage insurance policy upon fifteen (15) days written notice for discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim thereunder; and

(B) An insurer may immediately terminate an enrolled occupant's enrollment under a self-service storage insurance policy:

(i) For nonpayment of premium;

(ii) If the enrolled occupant ceases to have active business with the owner; or

(iii) If an enrolled occupant exhausts the aggregate limit of liability, if any, under the terms of the self-service storage insurance policy and the insurer sends written notice of termination to the enrolled occupant within thirty (30) calendar days after exhaustion of the limit; provided, however, that if notice is not timely sent, enrollment shall continue notwithstanding the aggregate limit of liability until the insurer sends written notice of termination to the enrolled occupant;

(4) If a self-service storage insurance policy is terminated by a policyholder, then the policyholder shall mail or deliver written notice to each enrolled occupant advising the enrolled occupant of the termination of the policy and the effective date of termination. The written notice shall be mailed or delivered to the enrolled occupant at least thirty (30) days prior to the termination; and

(5)(A) Whenever notice by an insurer is required pursuant to this section, the notice shall be in writing and may be mailed or delivered to the owner at the owner's mailing address and to its affected enrolled occupants' last known mailing addresses on file with the insurer;

(B) If notice is mailed pursuant to this section, then the insurer or owner, as the case may be, shall maintain proof of mailing in a form authorized or accepted by the United States postal service or other commercial mail delivery service;

(C) An insurer or owner may comply with any notice required by this section by providing electronic notice to an owner or its affected enrolled

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occupants, as the case may be, by electronic means. If notice is accomplished through electronic means, the insurer or owner, as the case may be, shall maintain proof that the notice was sent.

**56-6-1207. Licensure.**

(a) A sworn application for a license under this part shall be made to and filed with the commissioner on forms prescribed and furnished by the department.

(b) The application shall:

(1) Provide the name, residence address and other information required by the department for an individual that is designated by the applicant as the individual responsible for the owner's compliance with this part and the name of the principal, officer, employee, or representative who holds a current producer license in this state; and

(2) Provide the location of the applicant's home office.

(c) Initial licenses issued pursuant to this part shall be valid for a period of twenty-four (24) months and expire biennially on March 1 of the renewal year assigned by the commissioner.

(d)(1) Except as provided in subdivision (d)(2), each owner licensed under this part shall pay to the commissioner a fee as prescribed by the commissioner, but in no event shall the fee exceed one thousand dollars (\$1,000) for an initial self-service storage limited lines license and five hundred dollars (\$500) for each renewal.

(2) The fee prescribed for an owner that is engaged in self-service storage transactions at ten (10) or fewer locations in this state shall not exceed one hundred dollars (\$100) for an initial license and for each renewal.

**56-6-1301. Part definitions.**

For purposes of this part:

(1) "Commissioner" means the commissioner of commerce and insurance;

(2) "Exchange" means any health benefit exchange established or operating in this state, including any exchange established or operated by the United States department of health and human services; and

(3) "Navigator" means any person, other than an insurance producer, who:

(A) Receives any funding, directly or indirectly, from an exchange, this state or the federal government to perform any of the activities and duties identified in 42 U.S.C. § 18031(i);

(B) Facilitates enrollment of individuals or employers in health plans or public insurance programs offered through an exchange;

(C) Conducts public education or consumer assistance activities for, or on behalf of, an exchange; or

(D) Is described or designated by an exchange, this state or the United States department of health and human services, or could reasonably be described or designated as, a navigator, an in-person assister, enrollment assister, application assister or application counselor.

**56-6-1302. Prohibition against navigator selling, soliciting or negotiating policy of insurance.**

No navigator shall sell, solicit or negotiate any policy of insurance, either within or outside of an exchange.

**56-6-1303. Commissioner's authority to issue cease and desist order or to seek injunction against navigator.**

The commissioner may:

- (1) Issue a cease and desist order to a navigator for violating state or federal law pertaining to an exchange; and
- (2) Seek injunctive relief against a navigator acting in violation of state or federal law pertaining to an exchange.

**56-6-1304. Rules and regulations.**

The commissioner may promulgate such rules and regulations as may be necessary or appropriate to regulate the activities of navigators as may be consistent with the Patient Protection and Affordable Care Act.

**56-6-1305. Severability.**

If any provision of this part or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the part which can be given effect without the invalid provision or application, and to that end the provisions of this part are declared to be severable.

**56-7-401. Standard nonforfeiture law.**

(a) In the case of policies issued on and after the operative date of this section, as defined in subsection (n), no policy of life insurance, except as stated in subdivision (a)(1), shall be delivered or issued for delivery in this state, unless it contains in substance the following provisions, or corresponding provisions, which, in the opinion of the commissioner, are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements specified in this subsection (a), and are essentially in compliance with subsection (k):

(1) That, in the event of default in any premium payment, the company will grant, upon proper request not later than sixty (60) paid-up days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of the due date, of the amount that may be specified in this section. In lieu of the stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than sixty (60) days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit that provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits;

(2) That, upon surrender of the policy within sixty (60) days after the due date of any premium payment in default after premiums have been paid for at least three (3) full years, the company will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of the amount that may be specified in this section;

(3) That a stipulated paid-up nonforfeiture benefit shall become effective as specified in the policy, unless the person entitled to make the election elects another available option not later than sixty (60) days after the due date of the premium in default;

(4) That, if the policy becomes paid-up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit that became effective on or after the third policy anniversary, the company will pay, upon surrender of the policy within thirty (30) days after any policy anniversary, a cash surrender value of the amount that may be specified in this section;

(5) In the case of policies that cause, on a basis guaranteed in the policy, unscheduled changes in benefits or premiums, or that provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first twenty (20) policy years or during the term of the policy, whichever is shorter, the values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions created to the policy and that there is no indebtedness to the company on the policy; and

(6) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated in the policy, a statement that the method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which the values and benefits are consecutively shown in the policy.

(b) Any of subsection (a) or portions of subsection (a) that are not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy. The company shall reserve the right to defer the payment of any cash surrender value for a period of six (6) months after demand for the payment with surrender of the policy.

(c)(1) Subject to subdivisions (c)(2) and (3), any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required in subsection (a), shall be an amount not less than the excess, if any, of the present value, on the anniversary of the future guaranteed benefits that would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of:

(A) The then present value of the adjusted premiums as defined in subsections (e)-(h), corresponding to premiums that would have fallen due on and after the anniversary; and

(B) The amount of any indebtedness to the company on the policy.

(2) For any policy issued on or after the operative date of subsection (h), as defined in subsection (h), that provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value, referred to in subdivision (c)(1) shall be an amount not less than the sum of the cash surrender value, as defined in subdivision (c)(1), for an otherwise similar policy issued at the same age without the rider or supplemental policy provision and the cash surrender value, as defined in subdivision (c)(1), for a policy that provides only the benefits otherwise provided by the rider or supplemental policy provision.

(3) For any family policy issued on or after the operative date of subsection (h) as defined in subsection (h), that defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's age seventy-one (71), the cash surrender value referred to in subdivision (c)(1) shall be an amount not less than the sum of the cash surrender value, as defined in subdivision (c)(1), for an otherwise similar policy issued at the same age without the term insurance on the life of the spouse and the cash surrender value, as defined in subdivision (c)(1), for a policy that provides only the benefits otherwise provided by the term insurance on the life of the spouse.

(4) Any cash surrender value available within thirty (30) days after any policy anniversary under any policy paid-up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by subsection (a), shall be an amount not less than the present value, on the anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the company on the policy.

(d) Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of the anniversary shall be at least equal to the cash surrender value then provided for by the policy, or if none is provided for, that cash surrender value that would have been required by this section in the absence of the condition that premiums shall have been paid for at least a specified period.

(e)(1) This subsection (e) does not apply to policies issued on or after the operative date of subsection (h) as defined in subsection (h). Except as provided in subdivision (e)(3), the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of:

(A) The then present value of the future guaranteed benefits provided for by the policy;

(B) Two percent (2%) of the amount of insurance, if the insurance is uniform in amount, or of the equivalent uniform amount, if the amount of insurance varies with duration of the policy;

(C) Forty percent (40%) of the adjusted premium, for the first policy year; and

(D) Twenty-five percent (25%) of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less;

provided, that in applying the percentages specified in subdivisions (e)(1)(C) and (D), no adjusted premium shall be deemed to exceed four percent (4%) of the amount of insurance or level amount equivalent thereto. The date of issue of a policy for the purpose of this subsection (e) shall be the date as of which the rated age of the insured is determined.

(2) In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this subsection (e) shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy; provided, that in the case of a policy providing a varying amount of insurance issued on the life of a child under ten (10) years of age, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of ten (10) years of age were the amount provided by the policy at ten (10) years of age, or at expiry, if earlier.

(3) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provisions shall be equal to:

(A) The adjusted premiums for an otherwise similar policy issued at the same age without the term insurance benefits;

(B) Increased during the period for which premiums for the term insurance benefits are payable, by the adjusted premiums for the term insurance.

Subdivisions (e)(3)(A) and (B) being calculated separately and as specified in subdivisions (e)(1) and (2), except that, for the purposes of subdivisions (e)(1)(B), (C) and (D), the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in subdivision (e)(3)(B) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in subdivision (e)(3)(A).

(4) Except as otherwise provided in subsections (f) and (g), all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table; provided, that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three (3) years younger than the actual age of the insured, and the calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one half percent (3.5%) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. However, in calculating the present value of

any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred thirty percent (130%) of the rates of mortality according to the applicable table. Further, for insurance issued on a substandard basis, the calculation of the adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(f)(1) This subsection (f) does not apply to ordinary policies issued on or after the operative date of subsection (h) as defined in subsection (h). In the case of ordinary policies issued on or after the operative date of this subsection (f) as defined in this subsection (f), all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table, and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits; provided, that the rate of interest shall not exceed three and one half percent (3.5%) per annum, except that a rate of interest not exceeding four percent (4%) per annum may be used for policies issued on or after May 6, 1973, and prior to March 27, 1978, and a rate of interest not exceeding five and one half percent (5.5%) per annum may be used for policies issued on or after March 27, 1978; and provided, further, that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six (6) years younger than the actual age of the insured. However, in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table. For insurance issued on a substandard basis, the calculation of the adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(2) After February 3, 1961, any company may file with the commissioner a written notice of its election to comply with this subsection (f) after a specified date before January 1, 1966. After the filing of the notice, then upon the specified date, which shall be the operative date of this subsection (f) for the company, this subsection (f) shall become operative with respect to the ordinary policies thereafter issued by the company. If a company makes no election, the operative date of this subsection (f) for the company shall be January 1, 1966.

(g)(1) This subsection (g) does not apply to industrial policies issued on or after the operative date of subsection (h) as defined in subsection (h). In the case of industrial policies issued on or after the operative date of this subsection (g), as defined in this subsection (g), all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table and the rate of insurance specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits; provided, that the rate of interest shall not exceed three and one half percent (3.5%) per annum, except that a rate of interest not exceeding four percent (4%) per annum may be used for policies issued on or after May 6, 1973, and prior to March 27, 1978, and a rate of interest not exceeding five and one half percent (5.5%) per annum may be used for policies issued on or after March 27, 1978; provided, that in

calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table; and provided, further, that for insurance issued on a substandard basis, the calculations of the adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(2) After March 27, 1978, any company may file with the commissioner a written notice of its election to comply with this subsection (g) after a specified date before January 1, 1968. After the filing of the notice, then upon the specified date, which shall be the operative date of this subsection (g) for the company, this subsection (g) shall become operative with respect to the industrial policies thereafter issued by the company. If a company makes no election, the operative date of this section for the company shall be January 1, 1968.

(h)(1) This subsection (h) applies to all policies issued on or after the operative date of this subsection (h) as defined in this subsection (h). Except as provided in subdivision (h)(7), the adjusted premiums for any policy shall be calculated on an annual basis and shall be the uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums shall be equal to the sum of:

(A) The then present value of the future guaranteed benefits provided for by the policy;

(B) One percent (1%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years; and

(C) One hundred twenty-five percent (125%) of the nonforfeiture net level premium;

provided, that in applying the percentage specified in subdivision (h)(1)(C), no nonforfeiture net level premium shall be deemed to exceed four percent (4%) of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years. The date of issue of a policy for the purpose of this subsection (h) is the date as of which the rated age of the insured is determined.

(2) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one (1) per annum payable on the date of issue of the policy and on each anniversary of the policy on which a premium falls due.

(3) In the case of policies that cause, on a basis guaranteed in the policy, unscheduled changes in benefits or premiums, or that provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of the change in the benefits or premiums, the future adjusted premiums, nonforfeiture net level

premiums and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

(4) Except as otherwise provided in subdivision (h)(7), the recalculated future adjusted premiums for the policy shall be the uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all the future adjusted premiums shall be equal to the excess of:

(A) The sum of:

(i) The then present value of the then future guaranteed benefits provided for by the policy; and

(ii) The additional expense allowance, if any; over

(B) The then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

(5) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of:

(A) One percent (1%) of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten (10) policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten (10) policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and

(B) One hundred twenty-five percent (125%) of the increase, if positive, in the nonforfeiture net level premium.

(6) The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing A by B, where A equals the sum of the nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one (1) per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred; and the present value of the increase in future guaranteed benefits provided for by the policy; and B equals the present value of an annuity of one (1) per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

(7) Notwithstanding any other provisions of this subsection (h) to the contrary, in the case of a policy issued on a substandard basis that provides reduced graded amounts of insurance so that, in each policy year, the policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis that provides higher uniform amounts of insurance, adjusted premiums and present values for the substandard policy may be calculated as if it were issued to provide the higher uniform amounts of insurance on the standard basis.

(8)(A) Subject to subdivision (h)(8)(B), all adjusted premiums and present values referred to in this section shall:

(i) For all policies of ordinary insurance be calculated on the basis of:

(a) The Commissioners 1980 Standard Ordinary Mortality Table;

or

(b) At the election of the company for any one (1) or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors;

(ii) For all policies of industrial insurance be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table; and

(iii) For all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this subsection (h) for policies issued in that calendar year.

(B)(i) At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this subsection (h), for policies issued in the immediately preceding calendar year.

(ii) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by subsection (a), shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of the paid-up nonforfeiture benefit and paid-up dividend additions, if any.

(iii) A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit, including any paid-up additions under the policy, on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

(iv) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioners 1961 Industrial Extended Term Insurance Table for policies of industrial insurance.

(v) For insurance issued on a substandard basis, the calculation of any adjusted premiums and present values may be based on appropriate modifications of the tables mentioned in subdivision (h)(8)(B)(iv).

(vi) For policies issued prior to the operative date of the valuation manual, any commissioners' standard ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table. For policies issued on or after the operative date of the valuation manual the valuation manual shall provide the commissioners' standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table. If the commissioner approves by regulation any commissioners' standard ordinary mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual then that minimum nonforfeiture standard supersedes the minimum

nonforfeiture standard provided by the valuation manual.

(vii) For policies issued prior to the operative date of the valuation manual, any commissioners' standard industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table. For policies issued on or after the operative date of the valuation manual the valuation manual shall provide the commissioners' standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table. If the commissioner approves by regulation any commissioners' standard industrial mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

(9)(A) For policies issued prior to the operative date of the valuation manual, the nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred twenty-five percent (125%) of the calendar year statutory valuation interest rate for such policy as defined in the Standard Valuation Law, rounded to the nearer one quarter of one percent (0.25%).

(B) For policies issued on or after the operative date of the valuation manual the nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be provided by the valuation manual.

(10) Notwithstanding any other provision in this code to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form that involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form.

(11) After April 1, 1982, any company may file with the commissioner a written notice of its election to comply, with respect to any plan of insurance, with this subsection (h) after a specified date before January 1, 1989, which shall be the operative date of this subsection (h) for that plan of insurance for the company. If a company makes no election with respect to any plan of insurance, the operative date of this subsection (h) for that plan of insurance issued by the company shall be January 1, 1989.

(i) In the case of any plan of life insurance that provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance that is of such a nature that minimum values cannot be determined by the methods described in subsections (a)-(h), then:

(1) The commissioner must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by subsections (a)-(h);

(2) The commissioner must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders

or insureds; and

(3) The cash surrender values and paid-up nonforfeiture benefits provided by the plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this Standard Nonforfeiture Law for Life Insurance, as determined by regulations promulgated by the commissioner.

(j) Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (c)-(h) may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the amounts used to provide the additions. Notwithstanding subsection (c), additional benefits payable in the circumstances in subdivisions (j)(1)-(6) shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no additional benefits shall be required to be included in any paid-up nonforfeiture benefits:

(1) In the event of death or dismemberment by accident or accidental means;

(2) In the event of total and permanent disability;

(3) As reversionary annuity or deferred reversionary annuity benefits;

(4) As term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply;

(5) As term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if the term insurance expires before the child is twenty-six (26) years of age, is uniform in amount after the child is one (1) year of age, and has not become paid-up by reason of the death of a parent of the child; and

(6) As other policy benefits additional to life insurance and endowment benefits, and premiums for all the additional benefits.

(k)(1) This subsection (k), in addition to all other applicable subsections, applies to all policies issued on or after January 1, 1986. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary shall be in an amount that does not differ by more than two tenths of one percent (0.2%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years, from the sum of:

(A) The greater of zero (0) and the basic cash value specified in subdivision (k)(2); and

(B) The present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

(2) The basic cash value shall be equal to the present value, on the anniversary, of the future guaranteed benefits that would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, corresponding to premiums that would have fallen due on and after the anniversary;

provided, that the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in subsection (c) or (e), whichever is applicable, shall be the same as are the effects specified in subsection (c) or (e), whichever is applicable on the cash surrender values defined in that subsection.

(3) The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in subsection (e) or (h), whichever is applicable. Except as is required by the next succeeding sentence of this subdivision (k)(3), such percentage:

(A) Must be the same percentage for each policy year between the second policy anniversary and the later of:

(i) The fifth policy anniversary; and

(ii) The first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two tenths of one percent (0.2%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years; and

(B) Must be such that no percentage after the later of the two (2) policy anniversaries specified in subdivision (k)(3)(A) may apply to fewer than five (5) consecutive policy years;

provided, that no basic cash value may be less than the value that would be obtained if the adjusted premiums for the policy, as defined in subsection (e) or (h), whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

(4) All adjusted premiums and present values referred to in this section shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other subsections of this section. The cash surrender values referred to in this section include any endowment benefits provided for by the policy.

(5) Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in subsections (a)-(d), (h) and (j). The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits, such as those listed as subdivisions (j)(1)-(6), shall conform with the principles of this subsection (k).

(l)(1) This section does not apply to any of the following:

(A) Reinsurance;

(B) Group insurance;

(C) Pure endowment;

(D) Annuity or reversionary annuity contract;

(E) Any term policy of uniform amount that provides no guaranteed nonforfeiture or endowment benefits, or renewal of the policy, of twenty (20) years or less expiring before the insured is seventy-one (71) years of age, for which uniform premiums are payable during the entire term of the policy;

(F) Any term policy of decreasing amount that provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium,

calculated as specified in subsections (e), (f), (g) and (h), is less than the adjusted premium so calculated, on a term policy of uniform amount, renewal of the policy, that provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of twenty (20) years or less expiring before the insured is seventy-one (71) years of age, for which uniform premiums are payable during the entire term for the policy;

(G) Any policy that provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in subsections (c), (d), (e), (f), (g) and (h), exceeds two and one half percent (2.5%) of the amount of insurance at the beginning of the same policy year; or

(H) Any policy that is delivered outside this state through an agent or other representative of the company issuing the policy.

(2) For purposes of determining the applicability of this section, the age at expiry for a joint term life insurance policy shall be the age at expiry of the oldest life.

(m) Nothing in this section shall be held to prohibit a company from continuing a policy in force by virtue of an automatic loan provision in the policy.

(n) Except as provided in subsections (f) and (g), any company may file with the commissioner a written notice of its election to comply with this section after a certain date, which shall be specified in the notice. After the filing of the notice, then upon the specified date, which shall be the operative date for the company, this section shall become operative with respect to the policies thereafter issued by the company. If a company has not made such an election, the operative date of this section for the company shall be January 1, 1962.

(o) "Operative date of the valuation manual" means the January 1 of the first calendar year that the valuation manual is effective as defined in § 56-1-914.

#### **56-7-911. Reserves.**

In order to assure that sufficient funds will be made available to make the refunds as required and to guarantee promised benefits to policyholders, aggregate reserves maintained by the insurer for credit life insurance shall be at least equal to the sum of the following:

(1) For single premium credit life insurance:

(A)(i) If ages are available, the net single premiums for the remaining benefits, calculated by a seriatim method using the 1980 commissioner's standard extended term table and interest of not more than three and one half percent (3.5%). Insurers using this standard may accumulate an additional reserve to assure adequacy of funds for refunds and excess claims on terminated group policies or agency agreements. Approximate methods of calculating this reserve liability may be approved by the commissioner; provided, that:

(a) The actuarial derivation establishes clearly that the method produces at least the minimum reserve; and

(b) The assumptions on which the approximation is based are checked for accuracy and validity against the current business of the

insurer at least annually;

(ii) Approval of the methods shall be obtained from the commissioner prior to their use and the annual verification of assumptions shall be filed with the commissioner; or

(B) If ages are not available, the gross unearned premium, on the "Rule of 78" or pro rata basis as specified for refunds, calculated exactly;

(2) For single premium credit life insurance issued after December 31, 2004:

(A)(i) If ages are available, an insurer may calculate the net single premium for the remaining benefits by a seriatim method using the 2001 Commissioner's Standard Ordinary Male Composite Ultimate Mortality Table in lieu of the calculations under subdivision (1) for credit life insurance issued after December 31, 2004. The interest rates used in determining the minimum standard for valuation shall be the calendar year statutory valuation interest rates as defined in § 56-1-403(c)(1) [repealed]. Insurers using this standard may accumulate an additional reserve to assure adequacy of funds for refunds and excess claims on terminated group policies or agency agreements. Approximate methods of calculating this reserve liability may be approved by the commissioner; provided, that:

(a) The actuarial derivation establishes clearly that the method produces at least the minimum reserve; and

(b) The assumptions on which the approximation is based are checked for accuracy and validity against the current business of the insurer at least annually;

(ii) Approval of the methods shall be obtained from the commissioner prior to their use and the annual verification of assumptions shall be filed with the commissioner; or

(B) If ages are not available, the gross unearned premium, on the "Rule of 78" or pro rata basis as specified for refunds, calculated exactly; and

(3) For credit life insurance on the outstanding balance plan, reserves shall be equal to the gross unearned premium, calculated upon a pro rata basis.

**56-7-2914. Legislative review. [Effective until June 30, 2015. See the Compiler's Notes.]**

This part shall be reviewed annually by the commerce and labor committee of the senate, the insurance and banking committee of the house of representatives, the finance, ways and means committee of the senate and the finance, ways and means committee of the house of representatives, and these committees shall recommend necessary changes to the governor and the general assembly.

**56-7-2915. [Repealed.]**

**56-7-3007. Contracts to provide a plan of health benefits coverage. [Effective until June 30, 2015. See the Compiler's Notes.]**

(a) The department may enter into contracts with one (1) or more health insurance carriers or third party administrators selected through a competitive procurement process to provide a plan of health benefits coverage to eligible individuals. In soliciting proposals to provide coverage, the department

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may:

- (1) Specify rates to be paid by the program to the contractor;
- (2) Specify minimum requirements with respect to the health benefits to be covered by the plan, which shall prioritize preventative health services. The department shall consider requiring the plan to cover generic prescription drugs and physician visits with only limited cost sharing. The department may permit limitations on the amount of the services covered by the plan, and may permit increased cost sharing at higher utilization levels;
- (3) Solicit proposals with respect to specific benefits to be covered by the plan, including any limits on the benefits; provided, that the department encourages as broad a benefit package as possible for the rates provided, with benefit limits or higher cost sharing for appropriate services, such as non-preventative services, preferred over exclusions as a mechanism for controlling costs;
- (4) Provide other incentives for the development of benefit packages emphasizing preventative and primary care coverage;
- (5) Specify requirements and/or solicit proposals with respect to plan coverage of dependents of eligible individuals, including separate rates for dependent coverage or a requirement or proposal that no dependent coverage be offered;
- (6) Specify requirements and/or solicit proposals with respect to plan coverage of maternity services, including separate rates for the coverage;
- (7) Specify requirements and/or solicit proposals with respect to plan coverage or exclusions of preexisting conditions; provided, that no preexisting condition provision subjects an enrollee to an exclusion of longer than twelve (12) months;
- (8) Specify requirements and/or solicit proposals with respect to enrollee cost sharing, including cost sharing based on a sliding scale in accordance with income, as appropriate;
- (9) Specify requirements and/or solicit proposals with respect to provider networks, consistent with the prioritization of primary care services. Where geographically appropriate, the department should encourage selective contracting with high performance provider networks meeting specified quality, cost and patient satisfaction criteria, and should encourage pay-for-performance provider rate structures designed to reward quality of care and cost-effective medicine, where appropriate;
- (10) Specify requirements and/or solicit proposals with respect to quality assurance, quality improvement, disease prevention, disease and/or case management, cost containment, provider reimbursement mechanisms, the use of health information technology, wellness programs, incentives for healthy living and any other programmatic innovations or requirements. The department should encourage plans to promote enrollee wellness and personal responsibility, such as mandatory twelve-month waiting periods for enrollees who have previously dropped coverage, and to establish equity programs in which enrollees can earn reduced cost sharing and/or increased benefits through appropriate behavior, such as extended participation in the plan or participation in disease management or other designated programs offered by the plan;
- (11) Specify requirements and/or solicit proposals with respect to application and enrollment processes;
- (12) Specify requirements and/or solicit proposals with respect to procedures for the plan to collect premium contributions required pursuant to

§ 56-7-3013;

(13) Specify requirements and/or solicit proposals with respect to continuing coverage for enrollees who leave the employment of a contributing employer;

(14) Specify any applicable marketing guidelines, requirements and/or restrictions, including the use of the existing commercial brokerage or agent network or other more direct distribution mechanisms, where appropriate;

(15) Specify any applicable reporting requirements for contractors; and

(16) Include any other specifications or incentives as the department deems appropriate.

(b) Notwithstanding the requirements of former § 12-4-109 [see the Compiler's Notes], the department may:

(1) Consult with experts from outside the department and outside of state government in evaluating proposals to provide coverage under the program; and

(2) Consider the factors specified in its solicitation of proposals in awarding contracts.

(c) The department shall ensure that at least two (2) plans are offered to eligible individuals and shall enter into contracts to provide the plans with one (1) or more contractors. Each contract shall set forth the department's agreements with the contractor with respect to the items set forth in subsection (a), to the extent applicable, and shall also set forth any other necessary terms and conditions.

(d) Contractors shall be permitted to design the health benefits coverage offered through the plans, consistent with the requirements of this part and with any additional requirements established by the department.

(e) Contractors may subcontract for the provision of medical, administrative or other services in connection with the plan.

(f) The department shall compensate contractors as provided in the contract. The department may offer incentives, including a bonus payment to the contractors that meet enrollment criteria specified by the department, or for meeting other performance criteria specified by the department.

(g) Notwithstanding any other provisions of this part to the contrary, the state shall place all insurance risk for the health benefits provided pursuant to this part on the contractors as of January 1, 2010, so that the state, after that date, assumes no insurance risk for the health benefits coverage.

**56-7-3024. Report on the status of the health care proposal. [Effective until June 30, 2015. See the Compiler's Notes.]**

On August 1, 2006, February 1, 2007, and by February 1 of each year thereafter, the commissioner shall be required to provide a written report to the respective chairs of the insurance and banking committee of the house of representatives, the commerce and labor committee of the senate, and the finance, ways and means committees of the house of representatives and the senate, as well as to all members of the fiscal review committee of the general assembly as to the status of the organization and implementation of the different parts of the Cover Tennessee health care proposal. The report shall contain the status of:

(1) All solicitation proposals issued by the state seeking services in conjunction with the Cover Tennessee proposal;

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- (2) The number of participants in the program and cost per participant;
- (3) The average premium paid by each participant; and
- (4) The average premium broken down by state costs, employer costs and participant costs.

**56-7-3025. Legislative review. [Effective until June 30, 2015. See the Compiler's Notes.]**

This part shall be reviewed annually by the commerce and labor committee of the senate, the insurance and banking committee of the house of representatives, the finance, ways and means committee of the senate and the finance, ways and means committee of the house of representatives, and these committees shall recommend necessary changes to the governor and the general assembly.

**56-7-3026. [Repealed.]**

**56-13-105. Capital and surplus requirements.**

(a) No captive insurance company shall be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of:

- (1) In the case of a pure captive insurance company, not less than two hundred fifty thousand dollars (\$250,000);
- (2) In the case of an association captive insurance company, not less than five hundred thousand dollars (\$500,000);
- (3) In the case of an industrial insured captive insurance company, not less than five hundred thousand dollars (\$500,000);
- (4) In the case of a risk retention group, not less than one million dollars (\$1,000,000); and
- (5) In the case of a protected cell captive insurance company, not less than two hundred fifty thousand dollars (\$250,000).

(b) The commissioner may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business to be transacted.

(c) Capital and surplus shall be in the form of cash or an irrevocable letter of credit issued by a bank approved by the commissioner.

(d) Except as otherwise provided in this chapter, chapter 9 of this title shall apply to captive insurance companies formed under this chapter.

**56-13-114. Taxation.**

(a) Each captive insurance company shall pay to the department, on or prior to March 1 of each year, a tax at the rate of four tenths of one percent (0.4%) on the first twenty million dollars (\$20,000,000), and three tenths of one percent (0.3%) on each dollar thereafter on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums. Return premiums shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders. No tax shall be due or payable under this title as to considerations received for annuity contracts.

(b) Each captive insurance company shall pay to the department, on or prior to March 1 of each year, a tax at the rate of 225-thousandths of one percent

(0.225%) on the first twenty million dollars (\$20,000,000) of assumed reinsurance premium, and 150-thousandths of one percent (0.150%) on the next twenty million dollars (\$20,000,000), and 50-thousandths of one percent (0.050%) on the next twenty million dollars (\$20,000,000), and 25-thousandths of one percent (0.025%) of each dollar thereafter. However, no reinsurance tax applies to premiums for risks or portions of risks that are subject to taxation on a direct basis pursuant to subsection (a). No reinsurance premium tax shall be payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control; provided, that the commissioner verifies that such transaction is part of a plan to discontinue the operations of such other insurer, and if the intent of the parties to such transaction is to renew or maintain such business with the captive insurance company.

(c)(1) Except with regard to a protected cell captive insurance company, as defined in § 56-13-202, with more than ten (10) cells, the annual minimum aggregate tax to be paid by a captive insurance company calculated under subsections (a) and (b) shall be five thousand dollars (\$5,000), and the annual maximum aggregate tax shall be one hundred thousand dollars (\$100,000).

(2) For a protected cell captive insurance company with more than ten (10) cells, the annual minimum aggregate tax to be paid under subsections (a) and (b) shall be ten thousand dollars (\$10,000), and the annual maximum aggregate tax shall be the lesser of:

(A) One hundred thousand dollars (\$100,000) plus five thousand dollars (\$5,000) multiplied by the number of cells over ten (10); or

(B) Two hundred thousand dollars (\$200,000).

(3) If a captive insurance company is a special purpose financial captive organized and licensed under part 4 of this chapter and if such captive insurance company is subject to subsection (e) as a captive insurance company under common ownership and control with one (1) or more other captive insurance companies (collectively, the “consolidated group”), the premium tax calculated with respect to the consolidated group under subsections (a) and (b) shall be allocated to each member of the consolidated group in the same proportion that the premium allocable to such member bears to the total premium of all members. The consolidated group shall pay an aggregate premium tax equal to the greater of the sum of the premium tax allocated to the members and five thousand dollars (\$5,000); provided, that:

(A) If the total of premium tax allocated to all members of a consolidated group that are special purpose financial captives, as defined in § 56-13-402, exceeds one hundred thousand dollars (\$100,000), then the total premium tax allocated to such members shall be one hundred thousand dollars (\$100,000); and

(B) If the total of premium tax allocated to all members of the consolidated group that are not special purpose financial captive insurance companies exceeds one hundred thousand dollars (\$100,000), then the total of premium tax allocated to such members shall be one hundred thousand dollars (\$100,000).

(d) The tax provided for in this section shall constitute all taxes collectible under the laws of this state from any captive insurance company and from any insured on its payments to a captive insurance company, and no other

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occupation tax or other taxes shall be levied or collected from any captive insurance company by this state or any county, city, or municipality within this state, except ad valorem taxes on real and personal property used in the production of income.

(e) Subject to subsection (c), two (2) or more captive insurance companies under common ownership and control shall be taxed as though they were a single captive insurance company.

(f) All premium taxes paid into the department under this chapter shall be held by the commissioner as expendable receipts for the purpose of administering this chapter.

(g) The tax provided for in this section shall be calculated on an annual basis, notwithstanding policies or contracts of insurance or contracts of reinsurance issued on a multiyear basis. In the case of multiyear policies or contracts, the premium shall be prorated for purposes of determining the tax under this section.

(h) Nothing in this section shall be construed to provide an exemption from the sales and use tax imposed by title 67, chapter 6.

#### **56-13-122. Audit by the comptroller of the treasury — Annual reports.**

(a) The regulation of captive insurance companies as authorized by this chapter is subject to audit by the comptroller of the treasury as otherwise provided by state law. Information submitted to the department by captive insurance companies subject to this chapter shall, without written request, be open to inspection by, or disclosure to, the comptroller of the treasury or the comptroller's designated representative for purposes of audit.

(b) The commissioner shall annually report to the commerce and labor committee of the senate, and the insurance and banking committee of the house of representatives regarding the captive insurance company program. Such report shall include, but not be limited to, the number and types of captive insurance companies authorized by the commissioner to conduct business in this state, the amount of premium tax and fee revenues generated pursuant to the program, and any recommendations for legislative action to improve the captive insurance company program.

#### **56-13-201. Forming a protective cell captive insurance company.**

(a) One (1) or more sponsors may form a protected cell captive insurance company under this chapter. In addition to part 1 of this chapter, this part shall apply to protected cell captive insurance companies.

(b) A protected cell captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, as a mutual corporation, as a nonprofit corporation with one (1) or more members, or as a manager-managed limited liability company.

#### **56-13-202. Part definitions.**

As used in this part, unless the context requires otherwise:

(1) "General account" means all assets and liabilities of a protected cell captive insurance company not attributable to a protected cell;

(2) "Participant" means a person or an entity, authorized to be a participant by § 56-13-205, and any affiliate of a participant, that is insured by a protected cell captive insurance company, if the losses of the participant are

limited through a participant contract;

(3) "Participant contract" means a contract by which a protected cell captive insurance company insures the risks of a participant and limits the losses of each such participant to its pro rata share of the assets of one (1) or more protected cells identified in such participant contract;

(4) "Protected cell" means a separate account established by a protected cell captive insurance company formed or licensed under this chapter, in which an identified pool of assets and liabilities are segregated and insulated by means of this chapter from the remainder of the protected cell captive insurance company's assets and liabilities in accordance with the terms of one (1) or more participant contracts to fund the liability of the protected cell captive insurance company with respect to the participants as set forth in the participant contracts;

(5) "Protected cell assets" means all assets, contract rights, and general intangibles identified with and attributable to a specific protected cell of a protected cell captive insurance company;

(6) "Protected cell captive insurance company" means any captive insurance company:

(A) In which the minimum capital and surplus required by this chapter are provided by one (1) or more sponsors;

(B) That is formed or licensed under this chapter;

(C) That insures the risks of separate participants through participant contracts; and

(D) That funds its liability to each participant through one (1) or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the protected cell captive insurance company's general account;

(7) "Protected cell liabilities" means all liabilities and other obligations identified with and attributed to a specific protected cell of a protected cell captive insurance company; and

(8) "Sponsor" means any person or entity that is approved by the commissioner to provide all or part of the capital and surplus required by this chapter and to organize and operate a protected cell captive insurance company.

#### **56-13-204. Conditions for formation or licensure.**

A protected cell captive insurance company formed or licensed under this chapter may establish and maintain one (1) or more incorporated or unincorporated protected cells, to insure risks of one (1) or more participants, subject to the following conditions:

(1)(A) A protected cell captive insurance company may establish one (1) or more protected cells if the commissioner has approved in writing a plan of operation or amendments to a plan of operation submitted by the protected cell captive insurance company with respect to each protected cell. A plan of operation shall include, but is not limited to, the specific business objectives and investment guidelines of the protected cell; provided, that the commissioner may require additional information in the plan of operation;

(B) Upon the commissioner's written approval of the plan of operation, the protected cell captive insurance company, in accordance with the approved plan of operation, may attribute insurance obligations with

respect to its insurance business to the protected cell;

(C) A protected cell shall have its own distinct name or designation that shall include the words “protected cell” or “incorporated cell”;

(D) The protected cell captive insurance company shall transfer all assets attributable to a protected cell to one (1) or more separately established and identified protected cell accounts bearing the name or designation of that protected cell. Protected cell assets must be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell;

(E) An incorporated protected cell may be organized and operated in any form of business organization authorized by the commissioner. Each incorporated protected cell of a protected cell captive insurer shall be treated as a captive insurer for purposes of this chapter. Unless otherwise permitted by the organizational documents of a protected cell captive insurer, each incorporated protected cell of the protected cell captive insurer must have the same directors, secretary, and registered office as the protected cell captive insurer;

(F) All attributions of assets and liabilities between a protected cell and the general account shall be in accordance with the plan of operation and participant contracts approved by the commissioner. No other attribution of assets or liabilities shall be made by a protected cell captive insurance company between the protected cell captive insurance company’s general account and its protected cells. Any attribution of assets and liabilities between the general account and a protected cell shall be in cash or in readily marketable securities with established market values;

(2) The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the protected cell captive insurance company unless the protected cell is an incorporated cell. Amounts attributed to a protected cell under this part, including assets transferred to a protected cell account, are owned by the protected cell. No protected cell captive insurance company shall be, or hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account. Notwithstanding this subdivision (2), the protected cell captive insurance company may allow for a security interest to attach to protected cell assets or a protected cell account when in favor of a creditor of the protected cell and otherwise allowed under applicable law;

(3) This chapter shall not be construed to prohibit the protected cell captive insurance company from contracting with or arranging for an investment advisor, commodity trading advisor, or other third party to manage the protected cell assets of a protected cell, if all remuneration, expenses, and other compensation of the third party advisor or manager are payable from the protected cell assets of that protected cell and not from the protected cell assets of other protected cells or the assets of the protected cell captive insurance company’s general account;

(4)(A) A protected cell captive insurance company shall establish administrative and accounting procedures necessary to properly identify the one (1) or more protected cells of the protected cell captive insurance company and the protected cell assets and protected cell liabilities attributable to the protected cells. The directors of a protected cell captive insurance company shall keep protected cell assets and protected cell liabilities:

(i) Separate and separately identifiable from the assets and liabilities

of the protected cell captive insurance company's general account; and

(ii) Attributable to one (1) protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells;

(B) If subdivision (4)(A) is violated, then the remedy of tracing is applicable to protected cell assets when commingled with protected cell assets of other protected cells or the assets of the protected cell captive insurance company's general account. The remedy of tracing shall not be construed as an exclusive remedy;

(5) When establishing a protected cell, the protected cell captive insurance company shall attribute to the protected cell assets a value at least equal to the reserves and other insurance liabilities attributed to that protected cell;

(6) Each protected cell shall be accounted for separately on the books and records of the protected cell captive insurance company to reflect the financial condition and results of operations of such protected cell, net income or loss, dividends or other distributions to participants, and such other factors as may be provided in the participant contract or required by the commissioner;

(7) No asset of a protected cell shall be chargeable with liabilities arising out of any other insurance business the protected cell captive insurance company may conduct;

(8) No sale, exchange, or other transfer of assets shall be made by such protected cell captive insurance company between or among any of its protected cells without the consent of such protected cells;

(9) No sale, exchange, transfer of assets, dividend, or distribution shall be made from a protected cell to a protected cell captive insurance company or participant without the commissioner's approval. In no event shall the commissioner's approval be given if the sale, exchange, transfer, dividend or distribution would result in the insolvency or impairment of a protected cell;

(10) All attributions of assets and liabilities to the protected cells and the general account shall be in accordance with the plan of operation approved by the commissioner. No other attribution of assets or liabilities shall be made by a protected cell captive insurance company between its general account and any protected cell or between any protected cells. The protected cell captive insurance company shall attribute all insurance obligations, assets, and liabilities relating to a reinsurance contract entered into with respect to a protected cell to such protected cell. The performance under such reinsurance contract and any tax benefits, losses, refunds, or credits allocated pursuant to a tax allocation agreement to which the protected cell captive insurance company is a party, including any payments made by or due to be made to the protected cell captive insurance company pursuant to the terms of such agreement, shall reflect the insurance obligations, assets, and liabilities relating to the reinsurance contract that are attributed to such protected cell;

(11) In connection with the conservation, rehabilitation, or liquidation of a protected cell captive insurance company, the assets and liabilities of a protected cell shall, to the extent the commissioner determines they are separable, at all times be kept separate from, and shall not be commingled with, those of other protected cells and the protected cell captive insurance company;

(12) Each protected cell captive insurance company shall annually file with the commissioner such financial reports as required by the commissioner. Any such financial report shall include, without limitation, accounting statements detailing the financial experience of each protected cell;

(13) Each protected cell captive insurance company shall notify the commissioner in writing within ten (10) business days of any protected cell that is insolvent or otherwise unable to meet its claim or expense obligations;

(14) No participant contract shall take effect without the commissioner's prior written approval. The addition of each new protected cell, the withdrawal of any participant, or the termination of any existing protected cell shall constitute a change in the plan of operation requiring the commissioner's prior written approval;

(15) The business written by a protected cell captive insurance company, with respect to each protected cell, shall be:

(A) Fronted by an insurance company licensed under the laws of any state;

(B) Reinsured by a reinsurer authorized or approved by this state; or

(C) Secured by a trust fund in the United States for the benefit of policyholders and claimants or funded by an irrevocable letter of credit or other arrangement that is acceptable to the commissioner. The amount of security provided shall be no less than the reserves associated with those liabilities which are neither fronted nor reinsured, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums for business written through the participant's protected cell. The commissioner may require the protected cell captive insurance company to increase the funding of any security arrangement established under this subdivision (15). If the form of security is a letter of credit, the letter of credit shall be issued or confirmed by a bank approved by the commissioner. A trust maintained pursuant to this subdivision (15) shall be established in a form and upon such terms approved by the commissioner; and

(16) Notwithstanding this title or other laws of this state, and in addition to § 56-13-207, in the event of an insolvency of a protected cell captive insurance company where the commissioner determines that one (1) or more protected cells remain solvent, the commissioner may separate such cells from the protected cell captive insurance company and may allow, on application of the protected cell captive insurance company, for the conversion of such protected cells into one (1) or more new or existing protected cell captive insurance companies, or one (1) or more other captive insurance companies, pursuant to such plan of operation as the commissioner deems acceptable.

**56-13-205. Participation in a protected cell captive insurance company.**

(a) Associations, corporations, limited liability companies, partnerships, trusts, and other business entities may be participants in any protected cell captive insurance company formed or licensed under this chapter.

(b) A sponsor may be a participant in a protected cell captive insurance company.

(c) A participant need not be a shareholder of the protected cell captive

insurance company or any affiliate thereof.

(d) A participant shall insure only its own risks through a protected cell captive insurance company, unless otherwise approved by the commissioner.

**56-14-113. Premiums subject to a gross premium tax — Amount.**  
**[Effective until January 1, 2014. See the version effective on January 1, 2014.]**

(a) The premiums charged for surplus lines insurance are subject to a gross premium tax in an amount to be determined by subsection (b).

(b)(1) In addition to the full amount of gross premiums charged by the insurer for the insurance, every person licensed pursuant to § 56-14-104 shall collect and pay to the commissioner a sum based the total gross premiums charged, less any return premiums, for surplus lines insurance provided by the surplus lines agent pursuant to the license. Where the insurance covers an insured whose home state is this state, the sum payable shall be computed based on an amount equal to five percent (5%) on the gross premiums, less the amount of gross premiums allocated to this state and returned to the insured.

(2) The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the surplus lines agent shall be returned to the policyholder directly by the surplus lines agent or through the producing broker, if any.

(3) The surplus lines agent is prohibited from rebating, for any reason, any part of the tax.

(4) The commissioner is authorized to contract or compact, pursuant to part 2 of this chapter, with other states for the purpose of collecting and disbursing to reciprocal states, defined as those participating in such compact, any funds collected pursuant to subsection (a) that are applicable to other properties, risks, or exposures located or to be performed outside of this state. To the extent that other states where portions of the properties, risks, or exposures reside have failed to enter into compact or reciprocal allocation procedure with this state, the net premium tax collected shall be retained by this state.

(5) At the time of filing the report as set forth in § 56-14-106, each surplus lines licensee shall pay the premium tax due for the policies written during the period covered by the report.

(6) For the purposes of this section, “premium” includes all premiums, membership fees, assessments, dues, or any other consideration for insurance collected under this section.

(7) The tax collected under this section shall be in lieu of all other insurance taxes.

(8) The surplus lines agent shall collect from the insured the amount of the tax at the time of delivery of the cover note, certificate of insurance, policy, or other initial confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. No agent shall absorb the tax nor shall any agent, as an inducement for insurance or for any other reason, rebate all or any part of the tax or the agent’s commission.

(c) All surplus lines premium taxes collected by a surplus lines agent under this section are trust funds in the agent’s hands and the property of this state.

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The funds shall be maintained by the surplus lines agent in a separate account and shall not be mingled with any other funds, either business or private. Any surplus lines agent who fails or refuses to pay over to the state the surplus lines premium tax at the time required in this section, or who fraudulently withholds or appropriates or otherwise uses the money or any portions of the money belonging to the state, commits theft and shall be punished as provided by law for the crime of theft, regardless of whether the surplus lines agent has or claims to have any interest in the money so received.

(d) If the property of any surplus lines agent is seized upon any mesne or final process in any court in this state, or when the business of any surplus lines agent is suspended by the action of creditors or put into the hands of any assignee, receiver or trustee, all surplus lines premium tax money and penalties due the state from the surplus lines agent shall be considered preferred claims, and the state shall be a preferred creditor and shall be paid in full.

(e) The attorney general and reporter, upon request of the commissioner, shall proceed in the courts of this or any other state or in any federal court or agency to recover the tax not paid within the time prescribed in this section.

**56-14-113. Premiums subject to a gross premium tax — Amount.**  
**[Effective on January 1, 2014. See the version effective until January 1, 2014.]**

*(a) The premiums charged for surplus lines insurance are subject to a gross premium tax in an amount to be determined by subsection (b).*

*(b)(1) In addition to the full amount of gross premiums charged by the insurer for the insurance, every person licensed pursuant to § 56-14-104 shall collect and pay to the commissioner a sum based on the total gross premiums charged, less any return premiums, for surplus lines insurance provided by the surplus lines agent pursuant to the license. Where the insurance covers an insured whose home state is this state, the sum payable shall be computed based on an amount equal to five percent (5%) on the gross premiums, less the amount of gross premiums allocated to this state and returned to the insured.*

*(2) The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the surplus lines agent shall be returned to the policyholder directly by the surplus lines agent or through the producing broker, if any.*

*(3) The surplus lines agent is prohibited from rebating, for any reason, any part of the tax.*

*(4) The commissioner is authorized to contract or compact with other states for the purpose of collecting and disbursing to reciprocal states, defined as those participating in such contract or compact, any funds collected pursuant to subsection (a) that are applicable to other properties, risks, or exposures located or to be performed outside of this state. To the extent that other states where portions of the properties, risks, or exposures reside have failed to enter into compact or reciprocal allocation procedures with this state, the net premium tax collected shall be retained by this state.*

*(5) On March 1 of each year, at the time of filing the report as set forth in § 56-14-106, each surplus lines licensee shall pay the premium tax due for the policies written during the period covered by the report.*

*(6) For the purposes of this section, "premium" includes all premiums, membership fees, assessments, dues, or any other consideration for insurance*

*collected under this section.*

*(7) The tax collected under this section shall be in lieu of all other insurance taxes.*

*(8) The surplus lines agent shall collect from the insured the amount of the tax at the time of delivery of the cover note, certificate of insurance, policy, or other initial confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. No agent shall absorb the tax nor shall any agent, as an inducement for insurance or for any other reason, rebate all or any part of the tax or the agent's commission.*

*(c) All surplus lines premium taxes collected by a surplus lines agent under this section are trust funds in the agent's hands and the property of this state. Any surplus lines agent who fails or refuses to pay over to the state the surplus lines premium tax at the time required in this section, or who fraudulently withholds or appropriates or otherwise uses the money or any portions of the money belonging to the state, commits theft and shall be punished as provided by title 39, chapter 14, part 1, regardless of whether the surplus lines agent has or claims to have any interest in the money so received.*

*(d)(1) Any surplus lines agent or writing agent, holding the premium tax funds in trust, who fails and neglects to make returns and payments promptly and correctly as provided by subdivision (b)(5) shall forfeit and pay to the state, in addition to the amount of these taxes, an amount equal to five percent (5%) for the first month or fractional part of the first month of delinquency; provided, that should the period of delinquency exceed one (1) month, the rate of penalty will be an additional five percent (5%) for the second month or fractional part of the second month and penalty thereafter at the rate of one half of one percent (0.5%) per month of the amount of tax due, the maximum penalty not to exceed ten thousand dollars (\$10,000) for any agent not more than three (3) days delinquent. All delinquencies shall bear interest at the rate of ten percent (10%) per annum from the date the amount was due until paid. The penalty and interest shall apply to any part of the tax unpaid by the due date.*

*(2) The commissioner has the discretion, for good cause shown, upon application made in advance of the delinquency date, to grant an extension of time not to exceed sixty (60) days, to the surplus lines agent or writing agent, holding the premium tax funds in trust, to file the premium tax returns and pay the tax imposed in this part, without penalty attached, but the tax shall bear interest as provided in subdivision (d)(1) from the date the amount was due.*

*(3) Any surplus lines agent or writing agent, holding the premium tax funds in trust, failing to pay the tax due plus penalty and interest for sixty (60) days beyond the due date may thereafter be debarred from transacting any business of insurance in the state until these taxes and penalties are fully paid, and the commissioner shall revoke the license of the surplus lines agent or writing agent.*

*(4) The commissioner is authorized to promulgate rules that provide for a convenience fee to cover the cost of accepting electronic monthly affidavits, annual reports and tax payments. Any fee set by rule under the authority of this subdivision (d)(4) may be assessed in addition to any applicable penalty and interest. In no event shall the convenience fee exceed the actual costs incurred by the department in accepting electronic monthly affidavits, annual reports and tax payments. Any convenience fee may be collected from the*

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*insured in addition to the premium and tax.*

*(e) If the property of any surplus lines agent is seized upon any mesne or final process in any court in this state, or when the business of any surplus lines agent is suspended by the action of creditors or put into the hands of any assignee, receiver or trustee, all surplus lines premium tax money and penalties due the state from the surplus lines agent shall be considered preferred claims, and the state shall be a preferred creditor and shall be paid in full.*

*(f) The attorney general and reporter, upon request of the commissioner, shall proceed in the courts of this or any other state or in any federal court or agency to recover the tax not paid within the time prescribed in this section.*

**56-32-104. Issuance of certificate of authority. [Effective until May 16, 2013, and after December 31, 2016. See the version effective from May 16, 2013, until December 31, 2016.]**

(a) Issuance of a certificate of authority shall be granted upon payment of the application fee prescribed in § 56-32-119, if the commissioner is satisfied that the following conditions are met:

(1) Persons responsible for the conduct of the affairs of the applicant are competent, trustworthy and possess good reputations;

(2) The HMO will effectively provide or arrange for the provision of basic health care service on a prepaid basis through insurance or otherwise, except to the extent of reasonable enrollee cost sharing requirements such as copayments, deductibles or coinsurance; provided, however, that for basic health care services through participating network providers, the amount of coinsurance paid by the enrollee shall not exceed twenty percent (20%);

(3) The HMO is financially responsible, and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner may consider:

(A) The financial soundness of the arrangements for health care services in the schedule of charges used in connection with the health care service;

(B) The adequacy of working capital;

(C) Any agreement with an insurer, a hospital medical services corporation, a government, or any other organization for insuring the payment of cost for health care services or the provisions for automatic applicability of an alternative coverage in the event of discontinuance of the HMO;

(D) Any agreement with providers for the provision of health care services;

(E) In the event the HMO enters into an agreement with any physician-hospital organization for the provision of basic health care services on a prepayment basis, such as described in § 56-32-102(10), the commissioner may not disallow the agreement on the basis that it transfers risk to the physician-hospital organization; provided, that the HMO remains contractually responsible to its enrollees and to organizations or entities contracting with it for the provision or arrangement of all the basic health care services, and the HMO provides a system for reserving for its continued liability that is approved by the department of commerce and insurance; and

(F) Any deposit of cash or security submitted in accordance with § 56-32-112; and

(4) Nothing in the proposed method of operation, as shown by the information submitted pursuant to § 56-32-103, or by independent investigation, is contrary to the public interest.

(b) A certificate of authority shall be denied only after compliance with the requirements of § 56-32-118.

**56-32-104. Issuance of certificate of authority. [Effective from May 16, 2013, until December 31, 2016. See the version effective until May 16, 2013, and after December 31, 2016.]**

*(a) Issuance of a certificate of authority shall be granted upon payment of the application fee prescribed in § 56-32-119, if the commissioner is satisfied that the following conditions are met:*

*(1) Persons responsible for the conduct of the affairs of the applicant are competent, trustworthy and possess good reputations;*

*(2) The HMO will effectively provide or arrange for the provision of basic health care service on a prepaid basis through insurance or otherwise, except to the extent of reasonable enrollee cost sharing requirements such as copayments, deductibles or coinsurance; provided, however, that for basic health care services through participating network providers, the amount of coinsurance paid by the enrollee shall not exceed twenty percent (20%);*

*(3) The HMO is financially responsible, and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner may consider:*

*(A) The financial soundness of the arrangements for health care services in the schedule of charges used in connection with the health care service;*

*(B) The adequacy of working capital;*

*(C) Any agreement with an insurer, a hospital medical services corporation, a government, or any other organization for insuring the payment of cost for health care services or the provisions for automatic applicability of an alternative coverage in the event of discontinuance of the HMO;*

*(D) Any agreement with providers for the provision of health care services;*

*(E) In the event the HMO enters into an agreement with any physician-hospital organization, or any other provider, provider group, or provider network, for the provision of healthcare services on a prepayment basis or other risk sharing basis, the commissioner may not disallow the agreement on the basis that it transfers risk to the physician-hospital organization or other provider, provider group or provider network; or transfers the risk of payment for services to the physician-hospital organization or other provider, provider group or provider network; provided, that the HMO shall:*

*(i) Remain contractually responsible to its enrollees;*

*(ii) Enter into contractual arrangements utilizing contract provisions and arrangements that ensure compliance with applicable federal law, rule, regulation or waivers, including federal requirements; and*

*(iii) Assure the physician-hospital organizations, providers, provider groups, or provider networks that are at substantial financial risk obtain either aggregate or per-patient stop-loss protection insurance coverage for the healthcare services included in the scope of the arrangement; or the HMO remains contractually responsible to the subcontracted providers and provides a system for reserving for its continued liability; and*

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*(F) Any deposit of cash or security submitted in accordance with § 56-32-112; and*

*(4) Nothing in the proposed method of operation, as shown by the information submitted pursuant to § 56-32-103, or by independent investigation, is contrary to the public interest.*

*(b) A certificate of authority shall be denied only after compliance with the requirements of § 56-32-118.*

**56-32-128. Point of service.**

(a) As used in this section “managed health insurance issuer” means an entity that:

(1) Offers health insurance coverage or benefits under a contract that restricts reimbursement for covered services to a defined network of providers; and

(2) Is regulated under this title or is an entity that accepts the financial risks associated with the provision of health care services by persons who do not own or control, or who are not employed by, the entity.

(b)(1) Every managed health insurance issuer shall offer, or contract with another carrier to offer, an additional benefit at the option of the employee, or other principal enrollee, as follows:

(A) A point of service option that provides benefits for covered services through health professionals and providers who are not members of the network; or

(B) A preferred provider organization plan.

(2) The managed health insurance issuer shall fully disclose to the enrollee, in clear, understandable language, the terms and conditions of each option, the copayments or other cost-sharing features of each option and the costs associated with each option provided by the issuer. The commissioner shall promulgate rules regarding presentation of these terms and conditions, including a suggested standard format, to facilitate the comparison by the enrollee of the terms and conditions of each option. The obligation of a managed health insurance issuer to make the offer described in this section may be satisfied by the managed health insurance issuer providing to the employer or other plan sponsor presentation materials for dissemination to employees or principal enrollees.

(c) The amount of any additional premium required for the options described in subsection (b) may be paid by the purchaser of the health plan or may be paid by the enrollee of the group. The additional premium, taking into account any copayments or other cost-sharing features, shall not exceed an amount that is fair and reasonable in relation to the benefits provided, as determined by the commissioner of commerce and insurance.

(d)(1) Under the option described in subsection (b), the rate of reimbursement for health providers out of the network shall be the same as the rate of reimbursement for non-capitated providers in the network; provided, that copayment, co-insurance and other cost-sharing features may be different for out of network providers.

(2) A managed health insurance issuer shall not be required to reimburse an out of network provider for non-emergency services unless the provider:

(A) Has disclosed to the patient a reasonable range of the total charges for the services being provided; and

(B) Has advised the patient that the provider may bill the patient for the balance of any charges that are not otherwise reimbursed by the managed health insurance issuer. If, after request by the patient, the provider fails to disclose a reasonable range of the total of charges for any non-emergency services provided, the patient shall not be liable for the charges.

(e) The option described in subsection (b) shall be a part of every contract issued by a managed health insurance issuer; provided, that an employer who employs not more than one hundred (100) full-time employees may reject the point of service option in writing.

(f) The requirements of this section shall be satisfied if the employer or other person sponsoring the health insurance or health benefits plan includes for all principal enrollees a preferred provider organization plan, a plan that offers unrestricted access to providers, or a point of service benefit as specified in this section.

(g) Nothing contained in this section shall be construed or interpreted as applying to the TennCare programs administered pursuant to the waivers approved by the United States department of health and human services, to entities that qualify to participate in the Medicare+Choice program, or to individual health insurance contracts.

(h) Notwithstanding any other law to the contrary, an HMO may underwrite directly the point of service benefit required by this section.

#### **56-37-102. Chapter definitions.**

As used in this chapter, unless the context otherwise requires:

- (1) "Commissioner" means the commissioner of financial institutions;
- (2) "Licensee" means a premium finance company holding a license issued under this chapter;
- (3) "Person" means an individual, partnership, association, business corporation, nonprofit corporation, common law trust, joint-stock company or any other group of individuals however organized;
- (4) "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to a premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or producing agent in payment of premiums of an insurance contract, together with interest and a service charge as authorized and limited by this chapter;
- (5) "Premium finance company" means a person engaged in the business of entering into premium finance agreements or acquiring premium finance agreements from other premium finance companies; and
- (6) "Premiums financed" means any interest assigned pursuant to a premium finance agreement or other assignment in or relating to an insurance policy or contract of insurance, to the extent of the rights retained by an assignor or assignee of that policy or contract of insurance for the refund of premiums and related charges paid.

#### **56-37-112. Perfection of assignment and security interest.**

(a) A premium finance company, seller, building or savings and loan association, bank, trust company, industrial loan and thrift company or credit union authorized to do business in this state that finances insurance premi-

ums, shall be deemed to have a perfected assignment and security interest in any premiums financed if the buyer or borrower signs a written agreement assigning a security interest in the premiums financed to the premium finance company, seller, seller's assignee, or lender. No filing or other recordation of the premium finance agreement or financing statement shall be necessary to perfect the validity of the agreement as a valid assignment and secured transaction as against creditors, subsequent purchasers, pledgees, encumbrancers, trustees in bankruptcy or any other insolvency proceeding under any law, or anyone having the status or power of the aforementioned or their successors or assigns.

(b) Title 47, chapter 9, shall govern the relative priorities of security interests in, and any right of set-off against, funds advanced pursuant to a premium finance agreement or cash proceeds of a premium financed.

#### **56-61-116. Standard external review.**

(a) Within six (6) months after the date of receipt of a notice of an adverse determination or final adverse determination pursuant to § 56-61-113, an aggrieved person may file a request for an external review with the health carrier.

(b) Within ten (10) business days following the date of receipt of the copy of the external review request, the health carrier shall complete a preliminary review of the request to determine whether:

(1) The individual is or was a covered person in the health benefit plan at the time that the healthcare service was requested or, in the case of a retrospective review, was a covered person in the health benefit plan at the time that the healthcare service was provided;

(2) The healthcare service that is the subject of the adverse determination or the final adverse determination is a covered service under the covered person's health benefit plan;

(3) The covered person has exhausted the health carrier's internal grievance process as set forth in this chapter unless the covered person is not required to exhaust the health carrier's internal grievance process pursuant to § 56-61-115; and

(4) The covered person has provided all the information and forms required to process an external review, including the release form provided pursuant to § 56-61-113.

(c) Within three (3) business days after completion of the preliminary review, the health carrier shall notify the aggrieved person in writing whether:

(1) The request is complete; and

(2) The request is eligible for external review.

(d) If the request set out in subsection (a):

(1) Is not complete, the health carrier shall notify the aggrieved person in writing and include in the notice what information or materials are needed to make the request complete; or

(2) Is not eligible for external review, the health carrier shall notify the aggrieved person in writing and include in the notice the reasons for its ineligibility.

(e) The notice of initial determination shall include a statement informing the aggrieved person that a health carrier's initial determination that the external review request is ineligible for review may be appealed to the

commissioner.

(f) The commissioner may determine that a request is eligible for external review under this chapter notwithstanding a health carrier's initial determination that the request is ineligible and require that it be referred for external review.

(1) In making a determination under this subsection (f), the commissioner's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of this chapter.

(2) Whenever the health carrier or commissioner determines that a request is eligible for external review following the preliminary review conducted pursuant to subdivision (c)(2), within three (3) business days after the determination by the health carrier or within three (3) business days after the date of receipt of the determination by the commissioner, the health carrier shall notify the aggrieved person in writing of the request's eligibility and acceptance for external review.

(g) The health carrier shall include in the notice provided to the aggrieved person, a statement that additional information may be submitted in writing to the external review organization within six (6) business days following the date of receipt of the notice provided pursuant to subdivision (f)(2), and that the external review organization shall consider such additional information when conducting the external review. The external review organization is not required to, but may, accept for consideration such additional information submitted by the aggrieved person after six (6) business days. The external review organization shall forward to the health carrier any information received from an aggrieved person no later than one (1) business day after the date the information is received by the external review organization.

(h) Within six (6) business days after the date of receipt of the notice provided pursuant to subsection (g), the health carrier shall provide to the external review organization any documents and information considered in making the adverse determination or final adverse determination.

(1) Failure by the health carrier to provide the documents and information within the time specified in this subsection (h) shall not delay the external review.

(2) If the health carrier fails to provide the documents and information within the time specified in this subsection (h), the external review organization may terminate the external review and make a decision to reverse the adverse determination or final adverse determination.

(3) The external review organization shall notify the health carrier within one (1) business day of its decision to reverse the adverse determination or final adverse determination pursuant to subdivision (h)(2). The health carrier shall notify the aggrieved person within three (3) business days of the external review organization's decision.

(i) The external review organization shall review all of the information and documents received within six (6) business days pursuant to subsection (g) and any other information submitted in writing by the aggrieved person.

(j) Upon receipt of the information required to be forwarded pursuant to subsection (g), the health carrier may reconsider its final adverse determination that is the subject of the external review.

(1) Reconsideration by the health carrier of its final adverse determination shall not delay or terminate the external review.

(2) The external review may only be terminated by the health carrier if the health carrier decides, upon completion of its reconsideration, to reverse its final adverse determination and provide coverage or payment for the healthcare service that is the subject of the adverse determination or final adverse determination. If the health carrier reverses its previous determinations pursuant to this subsection (j), the health carrier shall not at a later date reverse its reversal.

(3) Within three (3) business days after making the decision to reverse its adverse determination or final adverse determination, the health carrier shall notify the aggrieved person and the external review organization in writing of its decision. The external review organization shall terminate the external review upon receipt of the notice from the health carrier sent pursuant to this subdivision (j)(3).

(k) In addition to the documents and information provided pursuant to subsections (g) and (h), the external review organization, to the extent that the information or documents are available and the external review organization considers them appropriate, shall consider the following in reaching a decision:

- (1) The covered person's pertinent medical records;
- (2) The attending healthcare professional's recommendation;
- (3) The consulting reports from appropriate healthcare professionals and other documents submitted by the aggrieved person or the covered person's treating physician or healthcare professional;
- (4) The terms of coverage under the covered person's health benefit plan with the health carrier to ensure that the external review organization's decision is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier;
- (5) Any applicable clinical review criteria developed and used by the health carrier;
- (6) The most appropriate practice guidelines, which shall include applicable medical or scientific evidence based standards;
- (7) Findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes, including:
  - (A) The agency for healthcare research and quality;
  - (B) The national institutes of health;
  - (C) The national cancer institute;
  - (D) The national academy of sciences;
  - (E) The centers for medicare & medicaid services;
  - (F) The federal food and drug administration; and
  - (G) Any national board recognized by the national institutes of health for the purpose of evaluating the medical value of healthcare services; and
- (8) The opinion of the external review organization's clinical reviewer or reviewers after considering subdivisions (k)(1)-(7), to the extent the information or documents are available and the clinical reviewer or reviewers consider appropriate.

(l) In reaching a decision, the external review organization is not bound by any decisions or conclusions reached during the health carrier's internal grievance process as set forth in this chapter. However, the external review organization shall be bound by the terms and conditions of the covered person's health benefit plan.

(m) Within forty (40) days after the date of receipt of the request for an

external review, the external review organization shall provide written notice of its decision to uphold or reverse the adverse determination or the final adverse determination to the health carrier.

(n) Within two (2) calendar days after rendering the decision under subsection (m), the external review organization shall notify the health carrier. Within three (3) calendar days after receiving the decision from the external review organization, the health carrier shall notify the aggrieved person of the external review organization's decision to uphold or reverse the adverse determination or final adverse determination. If the decision involved healthcare provider compensation, the health carrier shall make appropriate payment to the healthcare provider within ten (10) business days of the receipt of a notice of the external review organization's decision.

(o) The external review organization shall include in the notice sent pursuant to subsection (m):

- (1) A general description of the reason for the request for external review;
- (2) The date that the external review organization received the assignment from the health carrier to conduct the external review;
- (3) The date that the external review was conducted;
- (4) The date of the external review organization's decision;
- (5) The principal reason or reasons for the external review organization's decision, including any applicable, medical or scientific evidence based standards used as a basis for its decision;
- (6) The rationale for the external review organization's decision; and
- (7) References to the evidence or documentation, including the medical or scientific evidence based standards, considered in reaching the external review organization's decision.

(p) Upon receipt of a notice of a decision pursuant to subsection (m) reversing the adverse determination or final adverse determination, the health carrier shall immediately approve the coverage that was the subject of the adverse determination or final adverse determination. If the decision involved healthcare provider compensation, the health carrier shall make appropriate payment to the healthcare provider within ten (10) business days of the receipt of a notice of the external review organization's decision.

(q) The health carrier, regardless of utilization review accreditation commission (URAC) accreditation, shall have a contract with at least two (2) or more external review entities and may give the aggrieved person the opportunity to select, from among the external review organizations that the health carrier has contracts with, the external review organization to conduct the review; provided, however, that the commissioner may require assignments of external review organizations on a random basis if such random assignment is required per the direction of the United States department of health and human services. The commissioner is hereby granted emergency rulemaking authority to implement random assignments pursuant to this subsection (q).

#### **57-2-103. Manufacturing of intoxicating liquors — Petition — Election.**

(a) The county legislative body of any county shall have the right and power, and such county authorities shall have the duty, to call and direct the county election commission to hold an election at any time, upon the filing and presentation of a petition bearing the genuine signatures of ten percent (10%)

or more of the qualified voters of such county, based upon the number of votes cast in the last preceding presidential election in such county. Such petition shall be addressed to the county legislative body, and shall contain such language as to request, or to call upon the county legislative body, to call an election of the qualified voters of the county upon the question of permitting and legalizing the manufacture of intoxicating liquors and other intoxicating drinks within the boundaries of the county.

(b) Upon the adoption of a motion or resolution by the county legislative body directing the holding of an election, the county clerk shall file a certified copy of the motion or resolution with the county election commission.

(c) If a majority of the qualified votes cast in such election, in a county so holding an election, favors the manufacture of intoxicating liquors or other intoxicating drinks, as herein provided, in that event, it shall be lawful to manufacture intoxicating liquors and/or intoxicating drinks within the boundaries of such county.

(d)(1) Notwithstanding subsections (a)-(c), it shall be lawful to manufacture intoxicating liquors or intoxicating drinks, or both, within the boundaries of:

(A) A municipality if both retail package sales and consumption of alcoholic beverages on the premises have been approved through referendum of voters within such municipality;

(B) The unincorporated areas of a county, or a municipality which has a population of less than one thousand (1,000) persons in such county, if any jurisdiction located within such county has approved retail package sales through referendum of voters and any jurisdiction located within such county has approved consumption of alcoholic beverages on the premises through referendum of voters or if the county is included in the Tennessee River resort district as defined in § 57-4-102 and retail package sales have been approved through referendum by the voters in any jurisdiction within such county;

(C) Any municipality authorized under § 57-4-102(26) to allow facilities or establishments in such municipality to sell alcoholic beverages or wine for on premises consumption; or

(D) Any county or municipality where it was lawful to have manufacturing of intoxicating liquors or intoxicating drinks, or both under this subsection (d) as it read prior to July 1, 2013.

(2)(A) Notwithstanding subdivision (d)(1), the county legislative body of any such county may adopt a resolution to remove the unincorporated areas of the county from the application of this subsection (d) subject to the restrictions in subdivision (d)(2)(B). The county mayor shall notify the alcoholic beverage commission if such action is taken and approved.

(B) Such action may be taken by the county legislative body pursuant to subdivision (d)(2)(A) until a written notification is filed with the county mayor by any person as an official notice that the person intends to pursue all lawful avenues to manufacture intoxicating liquors or intoxicating drinks, or both, within the unincorporated areas of the county. Once the notice is filed, no action may be taken by the county legislative body unless such interest is withdrawn or the person's application to manufacture such intoxicating liquors or intoxicating drinks, or both, is denied by the state or federal government. A written notification as described pursuant to this subdivision (d)(2)(B) may not be filed with the county mayor until at least forty-five (45) days after July 1, 2013.

(C) If a county adopts a resolution pursuant to subdivision (d)(2)(A), the county may at a later date adopt a resolution reversing such action. The county mayor shall notify the alcoholic beverage commission if such action is taken and approved.

(3)(A) Notwithstanding subdivision (d)(1), the legislative body of any municipality may adopt a resolution to remove the municipality from the application of this subsection (d) subject to the restrictions in subdivision (d)(3)(B). The legislative body of the municipality shall notify the alcoholic beverage commission if such action is taken and approved.

(B) Such action may be taken by the legislative body of the municipality pursuant to subdivision (d)(3)(A) until a written notification is filed with the legislative body of the municipality by any person as an official notice that the person intends to pursue all lawful avenues to manufacture intoxicating liquors or intoxicating drinks, or both, within the boundaries of the municipality. Once the notice is filed, no action may be taken by the legislative body of the municipality unless such interest is withdrawn or the person's application to manufacture such intoxicating liquors or intoxicating drinks, or both, is denied by the state or federal government. A written notification as described pursuant to this subdivision (d)(3)(B) may not be filed with the legislative body of the municipality until at least forty-five (45) days after July 1, 2013.

(C) If a municipality adopts a resolution pursuant to subdivision (d)(3)(A), the municipality may at a later date adopt a resolution reversing such action. The legislative body of the municipality shall notify the alcoholic beverage commission if such action is taken and approved.

(4) If a manufacturer that has been issued a license pursuant to this subsection (d) is also selling the manufacturer's alcoholic beverages or products at retail and the manufacturer is located in a jurisdiction that pursuant to § 57-5-105 has established a distance requirement that restricts the storage, sale or manufacture of beer from places of public gatherings or in a municipality or Class B county that pursuant to § 57-5-106 has adopted proper ordinances governing the storage, sale, manufacture and/or distribution of beer within its jurisdictional boundary, then any distance requirement related to a building used for religious purposes or a building used as an elementary or secondary school in effect in that jurisdiction shall apply to the building used for the retail sale of the manufacturer's alcoholic beverages or products containing alcohol. The measurement shall be a building-to-building measurement.

(5) Notwithstanding subsections (a)-(c) and subdivision (d)(1), it shall be lawful to manufacture intoxicating liquors or intoxicating drinks, or both, on property that is listed on the National Register of Historic Places and where intoxicating liquors or intoxicating drinks, or both, were previously distilled on such property, or approximately on such property.

(e) Any manufacturer's license issued pursuant to subsection (c) or (d) shall comply with § 57-3-202.

(f)(1) Notwithstanding subsections (a)-(c), it shall be lawful to manufacture high alcohol content beer as defined in § 57-3-101(a) within the boundaries of:

(A) A municipality if both retail package sales and consumption of alcoholic beverages on the premises have been approved through voter referendum of voters within such municipality; or

(B) The unincorporated areas of a county if any jurisdiction located within such county has approved retail package sales through referendum of voters and any jurisdiction located within such county has approved consumption of alcoholic beverages on the premises through referendum of voters or if the county is included in the Tennessee River resort district as defined in § 57-4-102 and retail package sales have been approved through voter referendum in any jurisdiction within the county.

(2) Any manufacturer authorized pursuant to subdivision (f)(1) must also hold a brewer's notice approved by the United States department of the treasury, alcohol and tobacco tax and trade bureau, or any successor federal beer manufacturing permit granted by a federal bureau having jurisdiction over the manufacture of beer.

(3) In all jurisdictions not meeting the requirements of subdivision (f)(1), it shall be lawful to manufacture high alcohol content beer as defined in § 57-3-101(a) within the boundaries of a municipality or in the unincorporated area of such county upon such jurisdiction meeting the requirements of subsections (a)-(c), and if the manufacturer also holds a brewer's notice approved by the United States department of the treasury, alcohol and tobacco tax and trade bureau, or any successor federal beer manufacturing permit granted by a federal bureau having jurisdiction over the manufacture of beer.

(4) Notwithstanding any other law to the contrary, it shall be lawful for any manufacturer of high alcohol content beer authorized to manufacture such beverages pursuant to subdivision (f)(1) to also brew beer as this term is defined in § 57-5-101(b) on the same premises of the manufacturer of high alcohol content beer, upon meeting necessary federal, state and local license requirements.

(5) The general assembly hereby ratifies any action which may have been taken by the alcoholic beverage commission in issuing a license to a manufacturer of high alcohol content beer prior to June 10, 2011.

(g) The general assembly hereby ratifies any action which may have been taken by the alcoholic beverage commission in issuing a license to a manufacturer of intoxicating liquors or intoxicating drinks, or both prior to July 1, 2013.

(h)(1) Any person who has received a manufacturing license for intoxicating liquors or intoxicating drinks, or both from the alcoholic beverage commission or who has an application for such manufacturing license pending with the commission on July 1, 2013, may still receive and be able to renew the license if the person was authorized to apply for such license under this section prior to July 1, 2013.

(2) Any person who has received the necessary permit to manufacture intoxicating liquors or intoxicating drinks, or both from the alcohol and tobacco tax and trade bureau (TTB) or who has an application for such permit pending with the TTB on July 1, 2013, may still receive and be able to renew a manufacturing license from the alcoholic beverage commission if the person was authorized to apply for such manufacturing license under this section prior to July 1, 2013.

(3) If any person obtains a manufacturing permit pursuant to this subsection (h), then the jurisdiction such licensee is located in shall be allowed to have other manufacturers located in such jurisdiction, notwithstanding subdivision (d)(1).

**62-2-306. Effect of certificate — Seal.**

(a) The issuance of a certificate of registration by this board shall be evidence that the person named in the certificate is entitled to all the rights and privileges of an architect, engineer or landscape architect while the certificate remains unrevoked or unexpired.

(b) Each registered architect, registered engineer and registered landscape architect shall obtain and keep a seal of the design authorized by the board bearing the registrant's name, the registrant's registration number, the words "Registered Architect," "Registered Engineer" or "Registered Landscape Architect" and the words "State of Tennessee" or "Tennessee." The registrant shall stamp with the registrant's seal all original sheets of any bound set of plans and the first sheet of any specifications or reports prepared by the registrant or under the registrant's responsible charge. No architect, engineer or landscape architect shall affix the architect's, engineer's or landscape architect's seal or stamp to any document that has not been prepared by the architect, engineer or landscape architect or under the architect's, engineer's or landscape architect's responsibility. Plans, specifications and reports issued by the registrants shall be stamped with the seal during the life of a registrant's certificate, but it is unlawful for anyone to stamp or seal any document with the seal after the certificate of the registrant named on the seal has expired or has been revoked.

(c) As used in this section, "registered architects," "registered engineers" or "registered landscape architects" means only those registered architects, registered engineers or registered landscape architects who are required by this chapter to be registered in this state.

(d) The board may also adopt rules and regulations for the affixing to and endorsement of the registrant's seal on architectural, engineering and landscape architectural documents that may be necessary to implement compliance with this section.

(e) Notwithstanding subsection (b), an architect or engineer, after fully reviewing and modifying, as required, may affix that architect's or engineer's seal or stamp to a document, or part of a document, that has been prepared by another architect or engineer, if the document has been designated as a state standard prototype, pursuant to § 12-4-116 [see now § 12-4-111]. The architect or engineer who is involved in a state standard prototypical re-use project, as provided in § 12-4-116 [see now § 12-4-111], shall fully review and modify, as required, the documents and then affix that architect's or engineer's seal or stamp and signature on the documents. The architect or engineer shall become solely responsible for all documents on which that architect's or engineer's seal or stamp is placed.

**62-2-401. General provisions.**

(a) The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as an engineer:

(1) **Graduation from Approved Engineering Curriculum, Experience and Examination.** A graduate of an engineering curriculum of four (4) years or more, approved by the board as being of satisfactory standing, and with a specific record of four (4) years or more of progressive experience on engineering projects of a grade and character that indicates to the board that the applicant may be competent to practice engineering, and who has

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obtained certification as an engineer intern, shall be admitted to an examination prepared by the National Council of Examiners for Engineering and Surveying in the principles and practice of engineering. Upon passing the examination, the applicant shall be granted a certificate of registration to practice engineering in this state; provided, that the applicant is otherwise qualified; or

(2) **Long Established Practice.** A graduate of an approved engineering curriculum of four (4) years or more, with a specific record of twelve (12) years or more of progressive experience on engineering projects of a grade and character that indicates to the board that the applicant may be competent to practice engineering shall be admitted to an examination prepared by the National Council of Examiners for Engineering and Surveying, in the principles and practice of engineering. Upon passing the examination, the applicant shall be granted a certificate of registration to practice engineering in this state; provided, that the applicant is otherwise qualified.

(3) [Deleted by 2007 amendment, effective June 30, 2012.]

(b) Notwithstanding any provision to the contrary, the board may in its discretion grant up to one (1) year of qualified experience obtained in an established cooperative education program that is carried out within the framework of an approved engineering curriculum and that has been approved by the board.

#### **62-2-402. Engineer intern.**

The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as an engineer intern: a graduate in a curriculum of four (4) years or more leading to a baccalaureate degree in engineering and approved by the board as of satisfactory standing or who is a prospective graduate in good standing in the senior year in such a curriculum, and who passes an examination prepared by the National Council of Examiners for Engineering and Surveying involving the fundamentals of engineering; provided, that the applicant is of good character and repute.

#### **62-2-404. Application form — Fees.**

(a) Application for registration as a professional engineer or certification as an engineer intern shall be on a form prescribed and furnished by the board, shall contain statements made under oath showing the applicant's education and a detailed summary of the applicant's technical experience and shall contain references, none of whom may be members of the board.

(b)(1) The initial application fee shall be established by the board and shall accompany the application.

(2) The application fee for engineer intern certification or enrollment shall be established by the board and shall accompany the application. The application fee for engineer intern certification or enrollment shall entitle the applicant to take any required examination once.

(3) [Deleted with 2013 amendment, effective April 23, 2013.]

(4) The registration fee shall be established by the board and shall be paid upon approval of the application.

(5) Should the board deny the issuance of a certificate to any applicant, the application fee shall be retained by the board.

#### **62-2-405. Examinations.**

(a) The examinations will be held at times and places that the board directs. The board shall determine the acceptable grade on examinations.

(b) Written examinations will be given in two (2) sections and may be taken only after the applicant has met the other minimum requirements as given in §§ 62-2-301 and 62-2-401 — 62-2-403 and has been approved by the board for admission to the examinations as follows:

(1) **Engineering Fundamentals.** Consists of a National Council of Examiners for Engineering and Surveying prepared examination on the fundamentals of engineering. Passing this examination qualifies the examinee for an engineer intern certificate; provided, that the examinee has met all other requirements for certification required by this chapter; and

(2) **Principles and Practices of Engineering.** Consists of a National Council of Examiners for Engineering and Surveying examination on applied engineering. Passing this examination qualifies the examinee for registration as a professional engineer; provided, that the examinee has met the other requirements for registration by this chapter.

(c) A candidate failing an examination may apply for reexamination, which may be granted upon payment of a fee established by the board.

#### **62-4-120. Operation of a school.**

(a) Except as otherwise provided in this chapter, it is unlawful for any person, firm or corporation to operate a school without conspicuously displaying a valid license issued by the board under this chapter.

(b) An application for a license to operate a school shall be submitted by its owner on the form prescribed by the board. The application shall be accompanied by:

(1) A fee as set by the board;

(2) A surety bond executed by the applicant and a surety company authorized to do business in this state, made payable to the state of Tennessee in the amount of five thousand dollars (\$5,000), and conditioned that the school will afford to its students the full course of instruction required under this chapter;

(3) The proposed hours of operation for the school; and

(4) True and exact copies of applications from at least twenty (20) students, not including students transferring from another school, instructor trainees, or junior instructors, who will enroll and attend school for a minimum of twenty-five (25) hours per week; provided, that this student enrollment requirement shall apply only to a new school.

(c)(1) In lieu of the surety bond required by subdivision (b)(2), the applicant may file with the board:

(A) A federally insured certificate of deposit issued by any financial institution in this state in an amount no less than five thousand dollars (\$5,000); or

(B) An irrevocable letter of credit issued by any federally insured bank or savings and loan association in an amount no less than five thousand dollars (\$5,000).

(2) The bond, certificate of deposit or letter of credit filed in accordance with this section shall be in full force and effect whenever and wherever the school is operated.

(d)(1) A person, firm or corporation shall be eligible to receive a license or renewal of a license to operate a school only if the school employs at least:

(A) One (1) licensed instructor, where the enrollment is twenty (20) students or less;

(B) Two (2) licensed instructors, or one (1) licensed instructor and one (1) junior instructor who has not been employed as a junior instructor for more than three (3) years, where the enrollment is greater than twenty (20) but no greater than forty (40) students; and

(C) One (1) additional licensed instructor or junior instructor who has not been employed as a junior instructor for more than three (3) years, for each additional enrollment of twenty (20) students or fraction of twenty (20) students.

(2) For the purposes of this subsection (d), "student" does not include persons enrolled in an instructor training program or junior instructor.

(3) A school shall employ at least one (1) licensed instructor for each junior instructor employed.

(4) Any school offering an instructor training program shall conduct instruction for instructor trainees at a different time or in a separate classroom from instruction for students.

(e) Prior to the opening of a new school or the relocation of an existing school, the school must pass an initial inspection by at least one (1) member of the board. The inspection shall be made within ten (10) days of receipt by the board of a request for the inspection.

(f)(1) If a new school passes the required inspection, the board shall issue a license to operate the new school. A new school shall be closed to the public for ninety (90) days.

(2) If a relocated school passes the required inspection, the board shall reissue the license showing the change of address upon receipt of a fee as set by the board.

(g)(1) If the ownership of a school changes, the new owner may not operate the school more than thirty (30) days after the date of the change of ownership unless, within the thirty-day period, the new owner has submitted an application for a license to operate the school in accordance with subsection (b). The school shall not be considered as a new school for purposes of subdivision (b)(4).

(2) If the transferred school passes an inspection by at least one (1) member of the board, the board shall issue a license to operate the school to the new owner.

(h) A prospective purchaser of a school may request the board to determine whether, or on what conditions, the prospective purchaser would be qualified for licensure under this chapter. The request shall be submitted on the form prescribed by the board and shall be accompanied by a fee as set by the board. The prospective purchaser will receive a license to operate the school if, within six (6) months after receipt of a favorable determination from the board, the prospective purchaser:

(1) Acquires ownership of the school;

(2) Files an application for the license in accordance with subsection (b); and

(3) Fulfills any conditions stipulated by the board.

(i) Each school shall be inspected at least annually by a member of the board.

(j) In addition to the schools currently operated pursuant to this section, the

board shall establish rules and regulations for separate schools that specialize solely in natural hair styling, manicuring and the practice of aesthetics; provided, that at a minimum, such specialized schools remain subject to the requirements of this section.

(k) Notwithstanding any law to the contrary, the board shall establish rules and regulations enabling schools operated pursuant to this section to develop courses of instruction in practice and theory that will satisfy the requirements of § 62-4-110, and that consist of:

(1) Earning fifty percent (50%) of the hours needed for the specific license from classroom training; and

(2) Fifty percent (50%) of the hours needed for the specific license from apprenticing under the supervision of a person licensed pursuant to this chapter, who has at least ten (10) years of experience.

#### **62-4-125. Health and safety rules and regulations.**

(a) The board shall, with the approval of the department of health, promulgate rules of sanitation that it may deem reasonably necessary, with particular attention to the precautions for preventing the development and spread of infections and contagious diseases.

(b) Each school and shop shall have:

(1) Adequate restroom facilities, except when located in a commercial building where such facilities are already provided; and

(2) Separate entrances from entrances to adjoining residential or living quarters, if any.

(c) Where a school and a shop are operated in the same building, there shall be separate entrances and exits and separate restroom facilities for each business.

(d) It is unlawful:

(1) For the owner or manager of any school or shop to permit any person to sleep in or use for residential purposes any room used wholly or partially as a school or shop; and

(2) For any person, firm or corporation that holds a cosmetology, manicurist or aesthetician license to practice cosmetology outside a shop or school, or for any person, firm or corporation that holds a natural hair styling license to practice natural hair styling outside a shop or school, except:

(A) In any nursing home;

(B) In the residence of the person treated when the person is actually ill;

(C) In any hospital or infirmary;

(D) In a funeral establishment;

(E) In a retail establishment, to demonstrate or apply, or both, cosmetics without charge; or

(F) At the site of television, motion picture, video or theatrical productions, photographic sessions or similar activities.

(e) A manicurist may provide manicuring services to an ill, disabled or homebound individual, or to such individual's caregiver, custodian or guardian, in the individual's residence.

#### **62-5-101. Chapter definitions. [Effective until January 1, 2014. See the version effective on January 1, 2014.]**

As used in this chapter, unless the context otherwise requires:

(1) "Authorizing agent or agents" means a person or persons legally entitled to authorize the cremation of a dead human body or body parts. "Authorizing agent or agents" does not include a funeral director or funeral establishment;

(2) "Board" means the board of funeral directors and embalmers;

(3) "Cremation" means the heating process by which a human body or body parts are reduced to bone fragments through combustion and evaporation;

(4) "Crematory" means the building or portion of a building that houses one (1) or more cremation chambers used for the reduction of body parts or bodies of deceased persons to cremated remains and the holding facility. "Crematory" includes crematorium;

(5) "Embalming" means the preservation and disinfection, restoration or attempted preservation or disinfection of dead human bodies by the application of chemicals externally or internally, or both;

(6)(A) "Funeral directing" means the:

(i) Practice of directing or supervising funerals or the practice of preparing dead human bodies for burial by any means, other than by embalming, or the disposition of dead human bodies;

(ii) Making of arrangements to provide for funeral services or the making of financial arrangements for the rendering of funeral services;

(iii) Provision or maintenance of a place for the preparation for disposition or for the care or disposition of dead human bodies;

(iv) Use of the word or term "funeral director," "undertaker," "mortician," "funeral parlor," "funeral chapel" or any other word or term from which can be implied the practice of funeral directing; or

(v) Holding out to the public that one is a funeral director or engaged in a practice described in this subdivision (6);

(B) For the purposes of this chapter, the following are exempted from the definition of "funeral directing":

(i) The sale, maintenance and beautification of grave spaces;

(ii) The sale, installation and maintenance of permanent grave or crypt markers;

(iii) The opening and closing of a grave or crypt and the provision of the necessary grave or crypt equipment required for the final interment or entombment of casketed human bodies or cremated human remains;

(iv) The sale and maintenance of crypts constructed of permanent material as an integral part of a group of crypts that are constructed on the site of intended use in a cemetery;

(v) The sale and maintenance of above ground mausoleum crypts; and

(vi) The sale of funeral merchandise;

(C) Nothing in this section shall be construed as in conflict with § 46-2-101;

(7) "Funeral establishment" means any business, whether a proprietorship, partnership, firm, association or corporation, engaged in arranging, directing or supervising funerals for profit or other benefit, the preparing of dead human bodies for burial, the disposition of dead human bodies, the provision or maintenance of place for the preparation for disposition, or for the care or disposition of human bodies;

(8) "Licensee" means an embalmer or funeral director who holds a license

issued by the board;

(9) "Licensing period" means the period of time that a funeral director's or embalmer's license is in effect in this state;

(10) "Resident trainee" or "apprentice" means a person who is engaged in learning to practice as a funeral director or embalmer, as the case may be, under the personal supervision and instruction of a duly licensed funeral director or embalmer of this state under this chapter; and

(11) "State funeral directors association" means the Tennessee Funeral Directors Association or the Tennessee Funeral Directors and Morticians Association, a corporation.

**62-5-101. Chapter definitions. [Effective on January 1, 2014. See the version effective until January 1, 2014.]**

*As used in this chapter, unless the context otherwise requires:*

(1) "Authorizing agent or agents" means a person or persons legally entitled to authorize the cremation of a dead human body or body parts. "Authorizing agent or agents" does not include a funeral director or funeral establishment;

(2) "Board" means the board of funeral directors and embalmers;

(3) "Cremation" means the heating process by which a human body or body parts are reduced to bone fragments through combustion and evaporation;

(4) "Crematory" means the building or portion of a building that houses one (1) or more cremation chambers used for the reduction of body parts or bodies of deceased persons to cremated remains and the holding facility. "Crematory" includes crematorium;

(5) "Embalming" means the preservation and disinfection, restoration or attempted preservation or disinfection of dead human bodies by the application of chemicals externally or internally, or both;

(6)(A) "Funeral directing" means the:

(i) Practice of directing or supervising funerals or the practice of preparing dead human bodies for burial by any means, other than by embalming, or the disposition of dead human bodies;

(ii) Making of arrangements to provide for funeral services or the making of financial arrangements for the rendering of funeral services;

(iii) Provision or maintenance of a place for the preparation for disposition or for the care or disposition of dead human bodies;

(iv) Use of the word or term "funeral director," "undertaker," "mortician," "funeral parlor," "funeral chapel" or any other word or term from which can be implied the practice of funeral directing; or

(v) Holding out to the public that one is a funeral director or engaged in a practice described in this subdivision (6);

(B) For the purposes of this chapter, the following are exempted from the definition of "funeral directing":

(i) The sale, maintenance and beautification of grave spaces;

(ii) The sale, installation and maintenance of permanent grave or crypt markers;

(iii) The opening and closing of a grave or crypt and the provision of the necessary grave or crypt equipment required for the final interment or entombment of casketed human bodies or cremated human remains;

(iv) The sale and maintenance of crypts constructed of permanent material as an integral part of a group of crypts that are constructed on

*the site of intended use in a cemetery;*

*(v) The sale and maintenance of above ground mausoleum crypts; and*

*(vi) The sale of funeral merchandise;*

*(C) Nothing in this section shall be construed as in conflict with § 46-2-101;*

*(7) "Funeral establishment" means any business, whether a proprietorship, partnership, firm, association or corporation, engaged in arranging, directing or supervising funerals for profit or other benefit, the preparing of dead human bodies for burial, the disposition of dead human bodies, the provision or maintenance of place for the preparation for disposition, or for the care or disposition of human bodies;*

*(8) "Licensee" means an embalmer or funeral director who holds a license issued by the board;*

*(9) "Licensing period" means the period of time that a funeral director's or embalmer's license is in effect in this state;*

*(10) "Removal service":*

*(A) Means any person or entity that engages in arranging, directing, supervising or performing the transportation of deceased human remains for a fee; and*

*(B) Does not include:*

*(i) A licensed funeral director, a licensed embalmer, a licensed funeral establishment or person's employees;*

*(ii) A federal, state or county government agency involved in the transportation of deceased human remains; and*

*(iii) A private, for-profit ambulance service licensed pursuant to the Emergency Medical Services Act of 1983, compiled in title 68, chapter 140, part 3;*

*(11) "Resident trainee" or "apprentice" means a person who is engaged in learning to practice as a funeral director or embalmer, as the case may be, under the personal supervision and instruction of a duly licensed funeral director or embalmer of this state under this chapter; and*

*(12) "State funeral directors association" means the Tennessee Funeral Directors Association or the Tennessee Funeral Directors and Morticians Association, a corporation.*

**62-5-318. Requirement that removal service be registered with board of funeral directors and embalmers — Registration fee — Registration and renewal forms — Penalty. [Effective on January 1, 2014.]**

*(a) On or after January 1, 2014, no removal service shall operate in this state unless the removal service is registered with the board of funeral directors and embalmers. All such registrations shall expire two (2) years from the date of the registration or renewal. The board may promulgate and adopt such rules and regulations to establish adequate registration and renewal fees to cover the administrative costs associated with the registration program.*

*(b) In conjunction with the registration fee, the registrant must provide proof of liability insurance in an amount to be determined by the board by rule.*

*(c) Included on each registration and renewal form shall be a section whereby the applicant or registrant shall declare, under penalty of perjury pursuant to § 39-16-702(a)(4), whether such registrant or any principal officer, director, or any person owning more than five percent (5%) of the removal*

*service, has ever been convicted of a violation of this chapter or § 39-17-312.*

*(d) An applicant shall be prohibited from registering under this section for five (5) years from the date of conviction if the applicant or any principal officer, director, or any person owning more than five percent (5%) of the applicant's removal service has been convicted of a violation of this chapter or § 39-17-312.*

*(e) On or after January 1, 2014, it is an offense for a person to engage in the business of a removal service without registering or after falsely registering with the board.*

*(f) A violation of this section is a Class C misdemeanor.*

*(g) The registration of a removal service shall be immediately revoked by operation of law upon the conviction of the removal service or any principal officer, director, or person owning more than five percent (5%) of the removal service of any violation of this chapter or § 39-17-312. A copy of the judgment of conviction shall be transmitted to the board by the law enforcement agency responsible for the conviction.*

**62-6-102. Chapter definitions. [Effective until January 1, 2014. See the version effective on January 1, 2014.]**

As used in this chapter, unless the context otherwise requires:

(1) "Board" means the state board for licensing contractors created pursuant to § 62-6-104;

(2) "Commercial building contractors" are those contractors authorized to bid on and contract for every phase of the construction, direction, alteration, repair or demolition of any building or structure for use and occupancy by the general public;

(3) "Contracting" means any person or entity that performs or causes to be performed any of the activities defined in subdivision (4)(A) or (7);

(4)(A)(i) "Contractor" means any person or entity that undertakes to, attempts to or submits a price or bid or offers to construct, supervise, superintend, oversee, schedule, direct or in any manner assume charge of the construction, alteration, repair, improvement, movement, demolition, putting up, tearing down or furnishing labor to install material or equipment for any building, highway, road, railroad, sewer, grading, excavation, pipeline, public utility structure, project development, housing, housing development, improvement or any other construction undertaking for which the total cost is twenty-five thousand dollars (\$25,000) or more; provided, however, with respect to a licensed masonry contractor, such term means and includes the masonry portion of the construction project, the total cost of which exceeds one hundred thousand dollars (\$100,000), materials and labor;

(ii) "Contractor" includes, but is not limited to, a prime contractor, electrical contractor, electrical subcontractor, mechanical contractor, mechanical subcontractor, plumbing contractor and plumbing subcontractor, and licensed masonry contractor;

(iii) If the cost of a project exceeds twenty-five thousand dollars (\$25,000), "contractor" also includes a construction manager of any kind, including, but not limited to, a residential construction manager, construction consultant, architect or engineer who conducts or provides any activity or service described in this subdivision (4) other than normal architectural and engineering services;

(B) As used in subdivision (4)(A)(iii), “normal architectural and engineering services” means:

- (i) The preparation of bids, proposals, plans, specifications or other contract documents or the evaluation of contractors, subcontractors or suppliers;
- (ii) The approval of shop drawings, submittals, substitutions, pay requests or other certifications required by contract documents;
- (iii) Conducting representative reviews for progress and quality of construction on behalf of the owner;
- (iv) Interpretations and clarifications of contract documents;
- (v) Preparation and approval of changes in construction; and
- (vi) Preparation of as-built drawings and operation and maintenance manuals;

(C) “Contractor” does not include an engineer licensed in accordance with chapter 2 of this title who is:

- (i) Managing and supervising the removal, remediation or clean up of pollutants or wastes from the environment;
- (ii) Serving as a corrective action contractor, as defined by the rules and regulations of the department of environment and conservation;
- (iii) Conducting subsurface investigation or testing, or both, by drilling or boring to determine subsurface conditions;
- (iv) Conducting geophysical or chemical testing of soil, rock, ground water or residues; or
- (v) Installing of monitoring detection wells or piezometers for evaluating soil or ground water characteristics;

(D) “Contractor” does not include:

- (i) Any undertaking, as described in former subdivision (3)(D)(i) [repealed] for the department of transportation; or
- (ii) Subcontractors other than electrical subcontractors, licensed masonry subcontractors, mechanical subcontractors and plumbing subcontractors defined as a contractor pursuant to subdivision (4)(A);

(E) No contractor shall be authorized to perform contracting work as a licensed masonry contractor unless the contractor is licensed as a masonry contractor in accordance with this part.

(5) “Licensed masonry contractor” means a contractor who builds structures from individual units of brick, stone, or concrete and glass block laid in and bound together by mortar, where the total cost of the masonry portion of the construction project exceeds one hundred thousand dollars (\$100,000), materials and labor, and who is required to obtain a license as a licensed masonry contractor by the board;

(6) “Limited licensed electrician” means any person or entity that performs any electrical work that has a total cost of less than twenty-five thousand dollars (\$25,000) and that is required to be registered under § 68-102-150;

(7) “Prime contractor” is one who contracts directly with the owner; and

(8) “Residential contractor” means one whose services are limited to construction, remodelling, repair or improvement of one (1), two (2), three (3) or four (4) family unit residences not exceeding three (3) stories in height and accessory use structures in connection with the residences.

**62-6-102. Chapter definitions. [Effective on January 1, 2014. See the version effective until January 1, 2014.]**

*As used in this chapter, unless the context otherwise requires:*

(1) *“Board” means the state board for licensing contractors created pursuant to § 62-6-104;*

(2) *“Commercial building contractors” are those contractors authorized to bid on and contract for every phase of the construction, direction, alteration, repair or demolition of any building or structure for use and occupancy by the general public;*

(3) *“Contracting” means any person or entity that performs or causes to be performed any of the activities defined in subdivision (4)(A) or (7);*

(4)(A)(i) *“Contractor” means any person or entity that undertakes to, attempts to or submits a price or bid or offers to construct, supervise, superintend, oversee, schedule, direct or in any manner assume charge of the construction, alteration, repair, improvement, movement, demolition, putting up, tearing down or furnishing labor to install material or equipment for any building, highway, road, railroad, sewer, grading, excavation, pipeline, public utility structure, project development, housing, housing development, improvement or any other construction undertaking for which the total cost is twenty-five thousand dollars (\$25,000) or more; provided, however, with respect to a licensed masonry contractor, such term means and includes the masonry portion of the construction project, the total cost of which exceeds one hundred thousand dollars (\$100,000), materials and labor;*

(ii) *“Contractor” includes, but is not limited to, a prime contractor, electrical contractor, electrical subcontractor, mechanical contractor, mechanical subcontractor, plumbing contractor and plumbing subcontractor, masonry contractor, and roofing subcontractor where the total cost of the roofing portion of the construction project is twenty-five thousand dollars (\$25,000) or more;*

(iii) *If the cost of a project exceeds twenty-five thousand dollars (\$25,000), “contractor” also includes a construction manager of any kind, including, but not limited to, a residential construction manager, construction consultant, architect or engineer who conducts or provides any activity or service described in this subdivision (4) other than normal architectural and engineering services;*

(B) *As used in subdivision (4)(A)(iii), “normal architectural and engineering services” means:*

(i) *The preparation of bids, proposals, plans, specifications or other contract documents or the evaluation of contractors, subcontractors or suppliers;*

(ii) *The approval of shop drawings, submittals, substitutions, pay requests or other certifications required by contract documents;*

(iii) *Conducting representative reviews for progress and quality of construction on behalf of the owner;*

(iv) *Interpretations and clarifications of contract documents;*

(v) *Preparation and approval of changes in construction; and*

(vi) *Preparation of as-built drawings and operation and maintenance manuals;*

(C) *“Contractor” does not include an engineer licensed in accordance*

*with chapter 2 of this title who is:*

- (i) Managing and supervising the removal, remediation or clean up of pollutants or wastes from the environment;*
  - (ii) Serving as a corrective action contractor, as defined by the rules and regulations of the department of environment and conservation;*
  - (iii) Conducting subsurface investigation or testing, or both, by drilling or boring to determine subsurface conditions;*
  - (iv) Conducting geophysical or chemical testing of soil, rock, ground water or residues; or*
  - (v) Installing of monitoring detection wells or plezometers for evaluating soil or ground water characteristics;*
- (D) "Contractor" does not include:*

- (i) Any undertaking, as described in former subdivision (3)(D)(i) [repealed] for the department of transportation; or*
- (ii) Subcontractors other than electrical subcontractors, licensed masonry contractors, and roofing subcontractors where the total cost of the roofing portion of the construction project is twenty-five thousand dollars (\$25,000) or more, mechanical subcontractors and plumbing subcontractors defined as a contractor pursuant to subdivision (4)(A);*

*(E) No contractor shall be authorized to perform contracting work as a licensed masonry contractor unless the contractor is licensed as a masonry contractor in accordance with this part.*

*(5) "Licensed masonry contractor" means a contractor who builds structures from individual units of brick, stone, or concrete and glass block laid in and bound together by mortar, where the total cost of the masonry portion of the construction project exceeds one hundred thousand dollars (\$100,000), materials and labor, and who is required to obtain a license as a licensed masonry contractor by the board;*

*(6) "Limited licensed electrician" means any person or entity that performs any electrical work that has a total cost of less than twenty-five thousand dollars (\$25,000) and that is required to be registered under § 68-102-150;*

*(7) "Prime contractor" is one who contracts directly with the owner;*

*(8) "Residential contractor" means one whose services are limited to construction, remodelling, repair or improvement of one (1), two (2), three (3) or four (4) family unit residences not exceeding three (3) stories in height and accessory use structures in connection with the residences; and*

*(9) "Roofing work" means the act of removing, installing, repairing or otherwise maintaining any covering to any at- or above-grade structure for the purpose of providing weather proof protection or ornamental enhancement to such structure.*

**62-6-103. License requirement — Recovery of expenses by unlicensed contractor. [Effective until January 1, 2014. See the version effective on January 1, 2014.]**

(a)(1) Any person, firm or corporation engaged in contracting in this state shall be required to submit evidence of qualification to engage in contracting, and shall be licensed as provided in this part. It is unlawful for any person, firm, or corporation to engage in or offer to engage in contracting for any project in this state, unless, at the time of such engagement or offer to engage, the person, firm, or corporation has been duly licensed with a

monetary limitation sufficient to allow the person, firm, or corporation to engage in or offer to engage in such contracting project under this chapter. The board for licensing contractors shall have the authority to grant or allow an exception, in an amount not to exceed ten percent (10%), to the monetary limitation of such license provided in this subdivision (a)(1). Any person, firm, or corporation engaged in contracting, including a person, firm, or corporation that engages in the construction of residences or dwellings constructed on private property for the purpose of resale, lease, rent, or any other similar purpose, shall be required to submit evidence of qualification to engage in contracting and shall be licensed. It is unlawful for any person, firm, or corporation to engage in, or offer to engage in, contracting as described in this subdivision (a)(1) unless the person, firm, or corporation has been duly licensed under this part.

(2)(A) Notwithstanding subdivision (a)(1), any person, firm or church that owns property and constructs on the property single residences, farm buildings or other buildings for individual use, and not for resale, lease, rent or other similar purpose, is exempt from the requirements of this part.

(B) Except in counties with a population of not less than seven hundred seventy-seven thousand one hundred thirteen (777,113), according to the 1980 federal census or any subsequent federal census, a person or firm specified in subdivision (a)(2)(A) shall not make more than one (1) application for a permit to construct a single residence or shall not construct more than one (1) single residence within a period of two (2) years. There shall be a rebuttable presumption that the person or firm intends to construct for the purpose of resale, lease, rent or any other similar purpose if more than one (1) application is made for a permit to construct a single residence or if more than one (1) single residence is constructed within a period of two (2) years. This subdivision (a)(2)(B) shall not be construed to alter the definition of "contractor" as defined in § 62-6-102.

(3) Notwithstanding subdivisions (a)(1) and (2), the license requirements and restrictions contained in this subsection (a) shall not apply to single residences constructed by:

(A) Nonprofit charitable or religious corporations, associations and organizations that are exempt from federal income taxation under § 501(c)(3) of the Internal Revenue Code of 1986, compiled in 26 U.S.C. § 501(c)(3); or

(B) Students enrolled in educational institutions who construct the residences under the direct supervision of faculty as part of the curriculum of the institution.

(4) The exemption provisions of subdivisions (a)(2) and (3) concerning licensure shall apply to limited licensed electricians.

(5) Notwithstanding subdivision (a)(1), any single residence homeowner is exempt from the limited licensed electrician requirements of this part for purposes of performing electrical work on the homeowner's own residence.

(b) Any contractor required to be licensed under this part who is in violation of this part or the rules and regulations promulgated by the board shall not be permitted to recover any damages in any court other than actual documented expenses that can be shown by clear and convincing proof.

(c) Notwithstanding any law to the contrary, no lien otherwise authorized

pursuant to title 66, chapter 11 shall be available to any person, firm, or corporation engaged in construction in violation of this chapter.

**62-6-103. License requirement — Recovery of expenses by unlicensed contractor. [Effective on January 1, 2014. See the version effective until January 1, 2014.]**

*(a)(1) Any person, firm or corporation engaged in contracting in this state shall be required to submit evidence of qualification to engage in contracting, and shall be licensed as provided in this part. It is unlawful for any person, firm, or corporation to engage in or offer to engage in contracting for any project in this state, unless, at the time of such engagement or offer to engage, the person, firm, or corporation has been duly licensed with a monetary limitation sufficient to allow the person, firm, or corporation to engage in or offer to engage in such contracting project under this chapter. The board for licensing contractors shall have the authority to grant or allow an exception, in an amount not to exceed ten percent (10%), to the monetary limitation of such license provided in this subdivision (a)(1). Any person, firm, or corporation engaged in contracting, including a person, firm, or corporation that engages in the construction of residences or dwellings constructed on private property for the purpose of resale, lease, rent, or any other similar purpose, shall be required to submit evidence of qualification to engage in contracting and shall be licensed. It is unlawful for any person, firm, or corporation to engage in, or offer to engage in, contracting as described in this subdivision (a)(1) unless the person, firm, or corporation has been duly licensed under this part.*

*(2)(A) Notwithstanding subdivision (a)(1), any person, firm or church that owns property and constructs on the property single residences, farm buildings or other buildings for individual use, and not for resale, lease, rent or other similar purpose, is exempt from the requirements of this part.*

*(B) Except in counties with a population of not less than seven hundred seventy-seven thousand one hundred thirteen (777,113), according to the 1980 federal census or any subsequent federal census, a person or firm specified in subdivision (a)(2)(A) shall not make more than one (1) application for a permit to construct a single residence or shall not construct more than one (1) single residence within a period of two (2) years. There shall be a rebuttable presumption that the person or firm intends to construct for the purpose of resale, lease, rent or any other similar purpose if more than one (1) application is made for a permit to construct a single residence or if more than one (1) single residence is constructed within a period of two (2) years. This subdivision (a)(2)(B) shall not be construed to alter the definition of "contractor" as defined in § 62-6-102.*

*(3) Notwithstanding subdivisions (a)(1) and (2), the license requirements and restrictions contained in this subsection (a) shall not apply to single residences constructed by:*

*(A) Nonprofit charitable or religious corporations, associations and organizations that are exempt from federal income taxation under § 501(c)(3) of the Internal Revenue Code of 1986, compiled in 26 U.S.C. § 501(c)(3); or*

*(B) Students enrolled in educational institutions who construct the residences under the direct supervision of faculty as part of the curriculum*

*of the institution.*

*(4) The exemption provisions of subdivisions (a)(2) and (3) concerning licensure shall apply to limited licensed electricians.*

*(5) Notwithstanding subdivision (a)(1), any single residence homeowner is exempt from the limited licensed electrician requirements of this part for purposes of performing electrical work on the homeowner's own residence.*

*(b) Any contractor required to be licensed under this part who is in violation of this part or the rules and regulations promulgated by the board shall not be permitted to recover any damages in any court other than actual documented expenses that can be shown by clear and convincing proof.*

*(c) Notwithstanding any law to the contrary, no lien otherwise authorized pursuant to title 66, chapter 11 shall be available to any person, firm, or corporation engaged in construction in violation of this chapter.*

*(d) No contractor shall be authorized to perform roofing work on a construction project where the roofing portion of the construction project is twenty-five thousand dollars (\$25,000) or more unless the contractor is licensed; provided:*

*(1) Any person who holds a license issued by the department as either a manufactured home installer or a manufactured home retailer, pursuant to title 68, chapter 126, shall not be required to be a licensed contractor in order to perform roofing work on a manufactured home as defined in § 68-126-202; provided, that such work is related to the construction of a manufactured home or performed in connection with a manufacturer's warranty covering a manufactured home, or the repair of such home; and*

*(2) Any person who holds a license issued by the department as to the manufacture or installation of modular building units, pursuant to title 68, chapter 126, shall not be required to be a licensed contractor in order to perform roofing work on a modular building unit as defined in § 68-126-303; provided, that such work is related to the construction or installation of a modular building unit, or performed in connection with a manufacturer's warranty covering a modular building unit, or the repair of such unit.*

#### **62-6-120. Penalties.**

*(a)(1) Any person, firm or corporation that engages or offers to engage in contracting without a license as required by § 62-6-103 or who violates the terms and conditions of any license or renewal granted by the board pursuant to this part commits a Class A misdemeanor. The penalties imposed by this subdivision (a)(1) shall not apply to a person who engages a contractor without a license for the purpose of constructing a residence for the use of that person.*

*(2) Any person, firm or corporation that engages or offers to engage in contracting without a license as required by § 62-6-103 may, in the discretion of the board, be deemed ineligible to receive a license until six (6) months after the date the person, firm or corporation engaged or offered to engage in contracting. Additionally, no such person, firm or corporation shall be awarded any contract for the project upon which it engaged in contracting without a license or permitted to participate in any rebidding of the project.*

*(b) Any person, firm or corporation that accepts a bid in excess of twenty-five thousand dollars (\$25,000) from a contractor who is not licensed, with appropriate classifications and sufficient monetary limitations, or in the case of a limited licensed electrician where the amount is less than twenty-five thousand dollars (\$25,000), in accordance with this part, commits a Class A*

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misdemeanor.

(c)(1) No official of the state other than of the department of transportation shall issue a permit or contract work order to any applicant for a permit or work order to engage in contracting, unless the applicant holds a license as a contractor with appropriate classifications and sufficient monetary limitations, in accordance with this part.

(2) Any official violating this subsection (c) commits a Class A misdemeanor.

(d) Notwithstanding the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, relative to the amount of civil penalties that may be imposed, the board may impose a civil penalty not to exceed five thousand dollars (\$5,000) per offense against any person or firm that violates the terms and conditions of an existing license to engage in contracting or against any person or firm that engages in unlicensed contracting.

(e)(1)(A) The director of the board, acting on behalf of the board, is authorized to issue citations against persons acting in the capacity of or engaging in the business of a contractor without a license in violation of § 62-6-103.

(B) Each citation shall be in writing and shall describe with particularity the basis of the citation.

(C) Each citation shall contain an order to cease all violations of this part and an assessment of a civil penalty in an amount no less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000).

(2) The board shall promulgate rules and regulations to specify those conditions necessary to the issuance of a citation and the range of penalties for violations of this part.

(3) The sanctions authorized pursuant to this subsection (e) shall be in addition to any other remedies, civil and criminal, available to any person harmed by a violation of this part.

(4) Service of a citation issued pursuant to this subsection (e) may be made by certified mail at the last known business address or residence address of the person cited.

(5) A citation issued pursuant to this subsection (e) shall be issued by the director within one (1) year after the act or omission that is the basis for the citation.

(6) Any person served with a citation pursuant to this subsection (e) may appeal to the director by written notice postmarked within fifteen (15) working days after service of the citation with respect to violations alleged, scope of the order or amount of civil penalty assessed.

(7) If a person cited timely notifies the director that the person intends to contest the citation, the director shall afford an opportunity for a contested case hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(8) After all administrative appeals have been exhausted, the director may apply to the appropriate court for a judgment in an amount of the civil penalty, plus applicable court costs, and for an order to cease activities in violation of § 62-6-103. The motion for the order, which shall include a certified copy of the final order of the hearing officer or administrative judge, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

(9)(A) Notwithstanding any other law to the contrary, the director may waive part of the civil penalty if the person against whom the civil penalty is assessed satisfactorily completes all the requirements for, and is issued, a license as a general contractor.

(B) Any outstanding injury to the public shall be settled satisfactorily before a license as a general contractor is issued.

(f) Any individual or entity that fails to pay a civil penalty assessed by the board pursuant to the terms of a final order entered by the board after a contested case hearing against the individual or entity pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, may be referred to a collection agency.

(g) Failure to pay any civil penalty assessed by the board shall subject the individual or entity to suspension or revocation of a license issued pursuant to this part.

**62-6-127. [Repealed.]**

**62-6-605. Valid public adjuster license required for certain representations and negotiations. [Effective until January 1, 2014. See the version effective on January 1, 2014.]**

No residential roofing services provider shall represent or negotiate on behalf of, or offer or advertise an offer to represent or negotiate on behalf of, an owner or possessor of residential real estate on any insurance claim in connection with the repair or replacement of a roof system on the residential real estate unless the residential roofing services provider holds a valid public adjuster license issued in accordance with title 56, chapter 6, part 9.

**62-6-605. Licensure of residential roofing services providers as public adjusters. [Effective on January 1, 2014. See the version effective until January 1, 2014.]**

*No residential roofing services provider shall act or hold out as being a public adjuster, as defined in § 56-6-902, unless licensed as a public adjuster in accordance with title 56, chapter 6, part 9.*

**62-7-112. Dog guide to be admitted — Penalties.**

(a)(1) No proprietor, employee or other person in charge of any place of public accommodation, amusement or recreation, including, but not limited to, any inn, hotel, restaurant, eating house, barber shop, billiard parlor, store, public conveyance on land or water, theater, motion picture house, public educational institution or elevator, shall refuse to permit a blind, physically disabled or deaf or hard of hearing person to enter the place or to make use of the accommodations provided when the accommodations are available, for the reason that the blind, physically disabled or deaf or hard of hearing person is being led or accompanied by a dog guide. A dog guide shall be under the control of its handler. A place of public accommodation shall not require documentation, such as proof that the animal has been certified, trained or licensed as a dog guide.

(2)(A) No proprietor, employee or other person in charge of any place of public accommodation, amusement or recreation, including, but not limited to, any inn, hotel, restaurant, eating house, barber shop, billiard

parlor, store, public conveyance on land or water, theater, motion picture house, public educational institution or elevator, shall refuse to permit a dog guide trainer to enter such place or to make use of the accommodations provided in those places, when the accommodations are available, for the reason that the dog guide trainer is being led or accompanied by a dog guide in training; provided, that the dog guide in training, when led or accompanied by a dog guide trainer, is wearing a harness and is held on a leash by the dog guide trainer or, when led or accompanied by a dog guide trainer, is held on a leash by the dog guide trainer; and provided, further, that the dog guide trainer shall first have presented for inspection credentials issued by an accredited school for training dog guides.

(B)(i) For purposes of this section, "dog guide in training" includes dogs being raised for an accredited school for training dog guides; provided, however, that a dog being raised for that purpose is:

(a) Being held on a leash and is under the control of its raiser or trainer, who shall have available for inspection credentials from the accredited school for which the dog is being raised; and

(b) Wearing a collar, leash or other appropriate apparel or device that identifies the dog with the accredited school for which it is being raised.

(ii) "Dog guide in training" also includes the socialization process that occurs with the dog's trainer or raiser prior to the dog's advanced training; provided, that the socialization process is under the authorization of an accredited school.

(3) A place of public accommodation may ask a person to remove a dog guide or dog guide in training from the premises if:

(A) The dog guide or dog guide in training is out of control and its handler does not take effective action to control it; or

(B) The dog guide or dog guide in training is not housebroken.

(b) A violation of this section is a Class C misdemeanor.

**62-9-102. Scrap metal dealer and location registration — Declaration by registrant whether ever convicted of violations or offenses involving scrap metal — Prohibition against registering for period of time after conviction — Expiration.**

(a) No scrap metal dealer shall purchase, deal, or otherwise engage in the scrap metal business unless the dealer and any location used by the dealer to purchase, deal or otherwise engage in the scrap metal business is registered with the department. All registrations under this chapter shall expire two (2) years from the date of the registration or the renewal of the registration. The commissioner may promulgate and adopt rules and regulations that are reasonably necessary to carry out this chapter. The commissioner shall establish registration and renewal fees that are adequate to cover the administrative costs associated with the registration program.

(b) Included on each registration and renewal form shall be a section in which the registrant must declare, under penalty of perjury pursuant to § 39-16-702(a)(3), whether the registrant has ever been convicted of a violation of this chapter or convicted of the criminal offense of theft, burglary or vandalism, where the offense involves scrap metal.

(c) An applicant who has been convicted of a violation of this chapter or has

a conviction for the criminal offense of theft, burglary or vandalism, where the offense involves scrap metal, shall be prohibited from registering under this chapter for five (5) years from the date of conviction.

(d) Notwithstanding any law to the contrary, a registration issued pursuant to this chapter shall not expire immediately upon the death of the registrant. Such registration shall continue to be effective for the locations designated in such registration for a period of at least sixty (60) days; provided, that such sixty-day period may be extended by the commissioner for good cause.

(e) Notwithstanding any law to the contrary, a registration issued pursuant to this chapter shall expire upon notification to the department by the location registered with the department that the registrant is no longer an employee or agent of the location.

**62-9-113. Emergency rules — Committee for development of uniform terminology.**

(a) The department is authorized to promulgate emergency rules to implement this chapter.

(b) As part of the rules promulgated pursuant to this section, the commissioner of commerce and insurance shall develop uniform terminology to describe the types of metal most commonly sold as scrap. The commissioner may appoint a committee to develop the uniform terminology. The committee shall consist of at least five (5) members but no more than seven (7) members with at least one (1) member selected from each of the following groups: the scrap metal industry, the Tennessee Association of Chiefs of Police, the Tennessee Sheriffs' Association, the Home Builders Association of Tennessee and a member of the public who is not engaged in law enforcement, the scrap metal industry or the home building industry. The purpose of uniform terminology is to increase the chances of locating and recovering stolen scrap metal by enabling law enforcement officials to describe the stolen metal in their theft report in the same terms as the scrap metal industry uses to describe the same metal when it is brought in for sale.

(c) [Deleted by 2013 amendment, effective July 1, 2013.]

**62-11-104. Registration or licensing requirement — Identification requirement — Broad construction — Financial institutions.**

(a)(1) No partnership, association, company, or corporation shall engage in, or hold itself out as engaging in, the business of locksmithing in this state without first registering as a locksmith business in accordance with this chapter. No person, partnership, association, corporation, or local or state governmental employee shall engage in, or hold themselves out as engaging in, the business of locksmithing in this state without first registering or licensing any employee, agents, or contractors operating as locksmith apprentices or locksmiths in accordance with this chapter; provided, however, that employees of state higher education institutions may provide locksmithing services at facilities operated by the board of trustees of the University of Tennessee or the state board of regents in accordance with Chapter 54 of the Public Acts of 2011.

(2) When a person, partnership, association, corporation or local or state governmental employee files an application for licensure or for renewal, such person or entity shall provide a permanent fixed business location for such

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license.

(b) Persons who are not licensed under this chapter shall not provide any locksmithing services in violation of this chapter or any rule adopted pursuant to this chapter. No person or business who is not licensed under this chapter shall use the designation "locksmith," "locksmith apprentice" or "locksmith company," a designation which compounds, modifies or qualifies the words "locksmith," "locksmith apprentice" or "locksmith company" or which gives or is designed to give the impression that the person or business using such designation is a locksmith, locksmith apprentice or locksmith company.

(c) No locksmith may participate in a joint venture to provide equipment or services that require licensing under this chapter, unless all parties to the joint venture are licensed in accordance with this chapter.

(d) No locksmith may subcontract the provision of equipment or services requiring a license under this chapter to any unlicensed person, firm, association or corporation, except as provided in § 62-11-105.

(e) No locksmith shall employ, hire, contract with or associate with any person who is required to be licensed or registered with the commissioner in accordance with this chapter, unless the employee, agent or contractor is properly licensed or registered with the commissioner in compliance with § 62-11-111 or § 62-11-112.

(f) No locksmith shall retain as a registered employee any person known not to be of good moral character.

(g) No person who is not licensed under this chapter shall possess, use, sell or offer to sell any code book, lock picking tool, manipulation key, try-out key, safe opening tool or car opening tool; provided, that the provisions of this subsection (g) restricting the possession or use of the items listed in this subsection (g) shall not apply to students involved in locksmithing training programs or courses, so long as those tools are not used by the students other than in accordance with the programs.

(h) No person shall sell, offer to sell or give to any person not licensed under this chapter any code book, lock picking tool, manipulation key, try-out key, safe opening tool or car opening tool.

(i) No person who is not licensed under this chapter shall design, make, manufacture or install any master key or any system of change keys and master keys.

(j) No locksmith shall open any vehicle or real property, whether or not a fee is charged, without first obtaining personal identification from the person requesting the service. The personal identification may include, but is not limited to, personal knowledge, a driver license or other photo identification, address, telephone number, reference from any reliable source or a description of specific or unusual items that may be found upon entry. The information shall be recorded on a work order or invoice and shall be made available to a law enforcement officer with a properly executed court order at any reasonable time during normal business hours.

(k) Notwithstanding any provision of law to the contrary, no locksmith licensed under this chapter shall be prohibited from providing locksmithing services because of the manner of construction or operation of the lock or because of the location of the lock or application of the lock, whether the lock is applied to any door, window, hatch, lid, gate or other opening in or on any safe, vault, building, vehicle, aircraft or boat. It is the intent of the general assembly that this subsection (k) shall be construed in their broadest possible

sense; provided, however, that nothing in this section shall authorize a locksmith to provide services for any bank, savings and loan association or trust company without the consent of the bank, savings and loan association or trust company.

(l) All persons or entities licensed pursuant to this chapter shall provide the department of commerce and insurance with a permanent, fixed business location. The failure to provide such shall cause such persons or entities to be in violation of the Consumer Protection Act, compiled in title 47, chapter 18.

(m) On or after July 1, 2013, any partnership, association, company or corporation seeking initial licensure pursuant to this chapter shall be placed on a probationary licensure status pursuant to a probation period, the requirements of which shall be determined by the commissioner.

**62-11-111. Written application procedure and application fee — Disclosure of ownership interest in business — Interviews — Photo identification card — Expiration and renewal of license — Penalty for late renewal.**

(a) Any person desiring to be licensed as a locksmith shall make written application to the commissioner on forms prescribed by the commissioner. The applicant shall have a street address and zip code at which a summons may be served, except that a walk-in shop open to the public is not required. The application shall contain details of the applicant's training, experience and other qualifications relevant to locksmithing. An application fee, as set by the commissioner, shall accompany the application. The application shall be accompanied by the following documents:

- (1) Proof that the applicant is at least eighteen (18) years of age;
- (2) Sets of classifiable fingerprints on standard FBI/TBI application cards;
- (3) Recent color photograph of acceptable quality for identification;
- (4) Proof of a valid business license for each business entity for the county and city in which the business is located or proof of employment by an association, corporation, partnership, institution or government agency exempt from paying privilege taxes under title 67, chapter 4 and a notarized statement that no locksmithing services are being offered directly to the public;

(5) Proof of insurance as required by § 62-11-108;

(6) Proof that the applicant has passed an examination approved by the commissioner pursuant to § 62-11-106; provided, that this subdivision (a)(6) shall not apply to any person who shows satisfactory proof to the commissioner that, on June 26, 2007, the person has the equivalent of, as determined by the commissioner, at least five (5) years of full-time locksmithing experience. If the person is a sole proprietor or an owner of a locksmith shop or business, proof may be established by providing to the commissioner the municipal or county business license, sales tax identification number or federal tax identification number of the business together with the date the license or tax identification number for the locksmithing shop or business was obtained and other information that the commissioner may require for the commissioner to reasonably determine the applicant's locksmithing experience. If the person is an employee, partner or officer of a locksmithing shop or business, the proof shall be established by the owner of the shop or business certifying to the commissioner the number of years the

person has been a locksmith or employed by the owner as a locksmith and a description of the duties of the employee, partner or officer. If the person has not been associated with a shop or business or has been employed by a locksmith owner for fewer than five (5) years, the person shall provide the names of previous locksmithing shops or businesses with which the person was associated or for whom the person has been employed;

(7) Statements of any criminal records. Certain criminal convictions may disqualify an applicant for licensure as a locksmith; however, rehabilitation of individuals with a criminal record or records may be considered in the commissioner's discretion. Persons convicted of offenses involving fraud or theft shall not be entitled to licensure as a locksmith; and

(8) Proof of a permanent, fixed business address as determined appropriate by the department.

(b) Applications shall disclose any and all persons, firms, associations, corporations or other entities that own or control ten percent (10%) or greater interest in the applicant's business. The applicant shall also submit an affidavit accompanying the application stating whether or not any of the persons, associations, corporations or other entities with a ten percent (10%) or greater interest in the locksmith company have been convicted of a felony. In the event the individual or entity has been convicted of a felony, the commissioner may deny the application.

(c) If the application is satisfactory to the commissioner, then the commissioner may issue the license as a locksmith. Included in the documents issued by the commissioner shall be a photo identification card, on which shall be provided the locksmith's name, address, license number and the expiration date of the license. The photo identification card shall be carried by the locksmith at all times when performing duties as a licensed locksmith and shall be shown upon request. The commissioner shall have the authority to enter into agreements with any state agency for the production or distribution of the photo identification cards.

(d) Licenses as a locksmith shall expire on the last day of the twenty-fourth month following their issuance or renewal and shall become invalid on that date, unless renewed.

(e) It shall be the duty of the commissioner to notify every person licensed under this chapter of the date of expiration of the person's certificate of license and the fee required for its renewal for two (2) years. Renewal notices shall be mailed to the last known address of the locksmith ninety (90) days prior to the expiration date of the license.

(f) The renewal must be received in the office of the commissioner no less than thirty (30) nor more than sixty (60) days prior to the expiration of the license.

(g) The commissioner shall establish a late renewal fee in the event that a locksmith renews a license after the expiration of the license.

(h) Locksmith licenses may be renewed up to ninety (90) days after their expiration by payment of the renewal fee plus a penalty established by the commissioner for each month, or portion thereof, which elapses before payment is tendered. In the event that the renewal payment is not tendered within the specified time frame, the locksmith shall submit a new application for licensure as in the case of the issuance of the original license.

(i) The commissioner shall not grant renewal of a locksmith license until the commissioner has received satisfactory evidence of continuing education

completed during the immediately preceding license period.

(j) All applications and documents required by subsection (a) shall be maintained by the commissioner in accordance with the policies of the department of commerce and insurance.

**62-11-112. Locksmith apprentices.**

(a) All locksmith apprentices of any sole proprietorship, partnership, corporation, association, public or private institution or state agency with access to records, diagrams, key codes or other sensitive material pertaining to proposed or installed master key systems, any proposed or installed lock or any safe opening procedure shall be registered with the commissioner.

(b) Any person required to be registered shall make written application to the commissioner on forms prescribed by the commissioner. The application shall disclose the name of the business entity and the names of all locksmiths currently employed by the business entity. The commissioner shall verify that all named locksmiths are properly licensed locksmiths in the state. The application shall contain details of the applicant's training, experience and other qualifications relevant to locksmithing. An application fee as set by the commissioner shall accompany the application. The application shall also be accompanied by the following documents:

(1) Proof that the applicant is at least sixteen (16) years of age;

(2) A set or sets of classifiable fingerprints on standard FBI/TBI applicant cards;

(3) A recent color photograph or photographs of acceptable quality for identification; and

(4) Statements of any criminal records. Certain criminal convictions may disqualify an applicant for registration as a locksmith apprentice; however, rehabilitation of individuals with a criminal record or records may be considered at the commissioner's discretion. Persons convicted of offenses involving fraud or theft shall not be entitled to registration as a locksmith apprentice.

(c) If the application is satisfactory to the commissioner, then the commissioner shall issue to the applicant a certificate as a registered apprentice. Included in the documents issued by the commissioner shall be a photo identification card on which the commissioner shall state the registrant's name, address, employer, licensure number and the expiration date of the licensure. The photo identification card shall be carried by the registrant at all times when performing duties as a registered apprentice and shall be shown upon request.

(d) Certificates of registration shall expire on the last day of the twenty-fourth month following their issuance or renewal and shall become invalid on that date, unless renewed.

(e) It shall be the duty of the commissioner to notify every person registered under this chapter by mail of the date of expiration of the person's certificate of registration and the amount of fee required for its renewal for two (2) years. Renewal notices shall be mailed to the last known address of the registrant ninety (90) days prior to the expiration date of the certificate.

(f) The renewal must be received in the office of the commissioner thirty (30) days prior to the expiration of the certificate.

(g) The fee to be paid before the renewal of a certificate of registration after

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the expiration date shall be increased ten percent (10%) for each month or fraction of a month that payment for renewal is late; provided, that the maximum fee for a late renewal shall not exceed twice the normal fee.

(h) Locksmith apprentice registrations may be renewed up to ninety (90) days after their expiration by payment of the renewal fee plus a penalty established by the commissioner for each month, or portion thereof, which elapses before payment is tendered. In the event that the renewal payment is not tendered within the specified time frame, the locksmith apprentice shall submit a new application for registration as in the case of the issuance of the original registration.

(i)(1) An individual holding a valid certificate of registration as an apprentice pursuant to this section for at least two (2) years shall be eligible to take any examination required by the commissioner for initial licensure.

(2) An individual holding a valid certificate of registration as an apprentice pursuant to this section for at least four (4) years shall be exempt from taking any qualifying education as required by the commissioner prior to initial licensure.

#### **62-13-112. Errors and omissions insurance.**

(a) Each licensee who is licensed under this chapter shall, as a condition to licensing, carry errors and omissions insurance to cover all activities contemplated under this chapter. The requirements of this section shall not apply to acquisition agents.

(b) It is not mandatory that a person who has been issued a firm license obtain errors and omissions insurance in the name of the firm. Persons issued a firm license by the Tennessee real estate commission shall have the option of obtaining errors and omissions coverage in the name of the firm in addition to the mandatory individual coverage for the brokers and affiliate brokers within the firm.

(c) The commission shall make the insurance required under this section available to each licensee by contracting with an insurance provider for errors and omissions insurance coverage for each licensee after competitive, sealed bidding in accordance with title 12, chapter 3.

(d) Any policy obtained by the commission shall be available to each licensee with no right on the part of the insurance provider to cancel coverage for any licensee, other than as set forth by the commission and in compliance with § 56-7-1803.

(e) Each licensee shall have the option of obtaining errors and omissions insurance independently, if the coverage contained in an independently obtained policy complies with the minimum requirements established by the commission.

(f) The commission shall determine the terms and conditions of coverage required under this section, including, but not limited to, the minimum limits of coverage, the permissible deductible and the permissible exemptions.

(g) Each licensee shall be notified of the required terms and conditions of coverage for the policy at least thirty (30) days before the licensee's renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, shall be filed with the commission by the license renewal date by each licensee who elects not to participate in the insurance program administered by the commission.

(h) If the commission is unable to obtain errors and omissions insurance

coverage to insure all licensees who choose to participate in the insurance program at a reasonable premium, in such amount as determined by the commission, the requirement of insurance coverage under this section shall be void during the applicable contract period.

(i) The errors and omissions insurance coverage required by this section shall become effective as a condition of license granting or renewal on December 31, 1990.

(j)(1) If a licensee fails to obtain, maintain or renew the licensee's errors and omissions insurance which meets or exceeds the minimum requirements established by the commission and provide proof of compliance to the commission if such proof is required by subsection (g), then the licensee's license shall be suspended.

(2) The commission shall send notification of the license suspension by regular mail:

(A) To the licensee at the last known business address and home address of the licensee as registered with the commission; and

(B) To the licensee's broker at the broker's address as registered with the commission.

(3) While a license is suspended pursuant to this section, the licensee shall not engage in activities which require a license under this chapter, nor will the license be renewed or a new license issued. Any license suspended pursuant to this section shall remain suspended until the licensee establishes, to the satisfaction of the commission, compliance with this section.

(4) The licensee may, upon written notice to the commission, request a formal hearing on any license suspended pursuant to this section.

(k)(1) A license suspended pursuant to this section shall be reinstated if, within thirty (30) days of suspension, the licensee provides proof of insurance that complies with the required terms and conditions of coverage to the commission without the payment of any fee.

(2) A license suspended pursuant to this section shall be reinstated if, on or after thirty-one (31) days of suspension, the licensee provides proof of insurance that complies with the required terms and conditions of coverage to the commission and the licensee pays:

(A) For a license suspended more than thirty (30) days but less than one hundred twenty (120) days, a penalty fee of not more than five hundred dollars (\$500); or

(B) For a license suspended for more than one hundred twenty (120) days but less than one (1) year, a penalty fee of five hundred dollars (\$500), plus an additional penalty fee of not more than one hundred dollars (\$100) per month for months six through twelve (6-12).

(l)(1) A license suspended more than one (1) year pursuant to this section shall be automatically revoked without any further action by the commission.

(2) The commission shall send notification of the license revocation by regular mail:

(A) To the licensee at the last known business address and home address of the licensee as registered with the commission; and

(B) To the licensee's broker at the broker's address as registered with the commission.

(3) The licensee may, upon written notice to the commission, request a formal hearing on any license revoked pursuant to this section.

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(4) Upon revocation of license, any individual seeking reissuance of such license shall reapply for licensure and pay the penalty fees in subsection (k); provided, however, that the commission may, in its discretion:

(A) Waive reexamination or additional education requirements for such an applicant; or

(B) Reinstate a license subject to the applicant's compliance with such reasonable conditions as the commission may prescribe, including, but not limited to, payment of a penalty fee, in addition to the penalty fee provided in subdivision (k)(2)(B), of not more than one hundred dollars (\$100) per month, or any portion thereof, from the time of revocation.

(m) Notwithstanding subsections (k) and (l), if the licensee proves to the commission that the license suspension or revocation pursuant to subsections (k) or (l) was in error and that the licensee obtained, maintained or renewed the licensee's errors and omissions insurance as required by this section, then the commission shall immediately reinstate the license to the date of suspension.

**62-13-303. Qualifications — Prerequisites for licensing. [Effective until January 1, 2014. See the version effective on January 1, 2014.]**

(a)(1) Licenses shall be granted only to persons who bear a good reputation for honesty, trustworthiness, integrity and competence to transact the business of broker, affiliate broker or time-share salesperson in a manner to safeguard the interest of the public and only after satisfactory proof of such qualifications has been presented to the commission. No license shall be denied any person because of race, color, religion, sex or national origin.

(2) All applicants for an affiliate real estate broker's license must provide adequate proof to the commission that they have a high school degree or a general educational development (GED®) certificate.

(3)(A) All affiliate brokers must complete a Tennessee real estate commission-approved thirty (30) hours of education in specified areas, including contract writing, handling consumer deposits, listing property, agency disclosures or other areas designated by the commission within six (6) months of obtaining their affiliate broker's license. Notwithstanding any other provision contained in this chapter, if the required thirty (30) hours of education are not obtained and proof of compliance provided to the commission within the six-month period, the affiliate broker's license shall automatically expire at the end of the six-month period.

(B) The education requirements specified in this subsection (a), in addition to any other education requirements specified in this chapter to be completed by an applicant prior to licensure, shall be completed by an applicant for an affiliate broker's license prior to the original license being issued. This education requirement is in addition to any continuing education requirements specified in this chapter or the rules of the commission.

(b) Any person who desires an affiliate broker's license shall submit an application for examination to the commission on the prescribed form. The application shall be accompanied by:

(1) The fee specified in § 62-13-308; and

(2) Certification of satisfactory completion by the applicant of sixty (60) classroom hours in real estate at a school, college or university approved by the commission, including thirty (30) classroom hours covering the basic principles of real estate.

(c) Any person who desires a broker's license shall submit an application for examination to the commission on the prescribed form. The application shall be accompanied by:

(1) The fee specified in § 62-13-308;

(2) Certification of satisfactory completion by the applicant of one hundred twenty (120) classroom hours in real estate, before or after receipt of an affiliate broker's license, at a school, college or university approved by the commission, including thirty (30) classroom hours covering office or brokerage management; and

(3)(A) If the applicant was licensed as an affiliate broker after May 12, 1988, satisfactory proof that the applicant has held an active real estate license for at least thirty-six (36) months, or, if the applicant holds a baccalaureate degree with a major in real estate, for at least twenty-four (24) months; or

(B) If the applicant was licensed as an affiliate broker on or before May 12, 1988, satisfactory proof that the applicant has been engaged as a real estate licensee for at least twenty-four (24) months, or, if the applicant holds a baccalaureate degree with a major in real estate, for at least twelve (12) months.

(d) Each applicant who passes the examination shall submit an application for the appropriate license to the commission. If such application is not filed within six (6) months after the date of the examination passed, the applicant must retake and pass the examination in order to be eligible for a license.

(e) An application for an affiliate broker's license shall be accompanied by:

(1) The fee specified in § 62-13-308;

(2) Satisfactory proof that the applicant:

(A) Is at least eighteen (18) years of age; and

(B) Has been a resident of this state for at least forty-five (45) days; and

(3) A sworn statement by the broker with whom the applicant desires to be affiliated certifying that, in the broker's opinion, the applicant is honest and trustworthy and that the broker will actively supervise and train the applicant during the period the license remains in effect.

(f) An application for a broker's license shall be accompanied by:

(1) The fee specified in § 62-13-308; and

(2) Satisfactory proof that the applicant:

(A) Is at least eighteen (18) years of age; and

(B) Has been a resident of this state for at least forty-five (45) days.

(g) Every two (2) years, as a requisite for the reissuance of an affiliate broker's license originally issued on or after July 1, 1980, the affiliate broker shall furnish certification of satisfactory completion of sixteen (16) classroom hours in real estate courses at any school, college or university approved by the commission.

(h) Within a period of three (3) years from the date of issuance of an original broker's license, the licensee shall, as a requisite for the reissuance of the license, furnish certification of satisfactory completion of an additional one hundred twenty (120) classroom hours in real estate at any school, college or university approved by the commission. Beginning with the license period

immediately following the license period in which the licensee completes the one hundred twenty (120) hours of education specified in this subsection (h), the licensee of a broker's license originally issued after January 1, 2005, every two (2) years shall furnish certification of satisfactory completion of sixteen (16) classroom hours in real estate courses at any school, college or university approved by the commission as a requisite for the reissuance of the license.

(i) The commission shall, at least six (6) months prior to the deadline for furnishing the certification required by subsections (g) and (h), notify each licensee from whom the certification has not been received.

(j) Any person who desires a time-share salesperson license shall submit an application for examination and license to the commission on the prescribed form. The application shall be accompanied by:

- (1) The fees specified in § 62-13-308 for examination and license;
- (2) Satisfactory proof that the applicant is:
  - (A) At least eighteen (18) years of age; and
  - (B) A resident of this state;

(3) A sworn statement by the broker with whom the applicant desires to be affiliated certifying that, in the broker's opinion, the applicant is honest and trustworthy and that the broker will actively supervise and train the applicant during the period the license remains in effect; and

(4) Certification, by the broker with whom the applicant desires to be affiliated, stating that the applicant has completed a thirty (30) hour training program consisting of instruction in the fundamentals of the Tennessee Time-Share Act, compiled in title 66, chapter 32, part 1, and related topics.

(k) Any person who desires an acquisition agent license shall submit an application for examination and license to the commission on the prescribed form.

- (1) The application shall be accompanied by:
  - (A) The fees specified in § 62-13-308 for examination and license;
  - (B) Proof satisfactory to the commission that the applicant is at least eighteen (18) years of age; and
  - (C) Proof satisfactory to the commission that the applicant is of good moral character.

(2) Compliance by an acquisition agent with the licensing requirements of this section shall constitute compliance with the registration requirements contained in § 66-32-139.

**62-13-303. Qualifications — Prerequisites for licensing. [Effective on January 1, 2014. See the version effective until January 1, 2014.]**

*(a)(1) Licenses shall be granted only to persons who bear a good reputation for honesty, trustworthiness, integrity and competence to transact the business of broker, affiliate broker or time-share salesperson in a manner to safeguard the interest of the public and only after satisfactory proof of such qualifications has been presented to the commission. No license shall be denied any person because of race, color, religion, sex or national origin.*

*(2) All applicants for an affiliate real estate broker's license must provide adequate proof to the commission that they have a high school degree or a general educational development (GED®) certificate.*

(3)(A) *All affiliate brokers must complete a Tennessee real estate commission-approved thirty (30) hours of education in specified areas, including contract writing, handling consumer deposits, listing property, agency disclosures or other areas designated by the commission within six (6) months of obtaining their affiliate broker's license. Notwithstanding any other provision contained in this chapter, if the required thirty (30) hours of education are not obtained and proof of compliance provided to the commission within the six-month period, the affiliate broker's license shall automatically expire at the end of the six-month period.*

(B) *The education requirements specified in this subsection (a), in addition to any other education requirements specified in this chapter to be completed by an applicant prior to licensure, shall be completed by an applicant for an affiliate broker's license prior to the original license being issued. This education requirement is in addition to any continuing education requirements specified in this chapter or the rules of the commission.*

(b) *Any person who desires an affiliate broker's license shall submit an application for examination to the commission on the prescribed form. The application shall be accompanied by:*

(1) *The fee specified in § 62-13-308; and*

(2) *Certification of satisfactory completion by the applicant of sixty (60) classroom hours in real estate at a school, college or university approved by the commission, including thirty (30) classroom hours covering the basic principles of real estate.*

(c) *Any person who desires a broker's license shall submit an application for examination to the commission on the prescribed form. The application shall be accompanied by:*

(1) *The fee specified in § 62-13-308;*

(2) *Certification of satisfactory completion by the applicant of one hundred twenty (120) classroom hours in real estate, before or after receipt of an affiliate broker's license, at a school, college or university approved by the commission, including thirty (30) classroom hours covering office or brokerage management; and*

(3)(A) *If the applicant was licensed as an affiliate broker after May 12, 1988, satisfactory proof that the applicant has held an active real estate license for at least thirty-six (36) months, or, if the applicant holds a baccalaureate degree with a major in real estate, for at least twenty-four (24) months; or*

(B) *If the applicant was licensed as an affiliate broker on or before May 12, 1988, satisfactory proof that the applicant has been engaged as a real estate licensee for at least twenty-four (24) months, or, if the applicant holds a baccalaureate degree with a major in real estate, for at least twelve (12) months.*

(d) *Each applicant who passes the examination shall submit an application for the appropriate license to the commission. If such application is not filed within six (6) months after the date of the examination passed, the applicant must retake and pass the examination in order to be eligible for a license.*

(e) *An application for an affiliate broker's license shall be accompanied by:*

(1) *The fee specified in § 62-13-308;*

(2) *Satisfactory proof that the applicant:*

(A) *Is at least eighteen (18) years of age; and*

- (B) *Has been a resident of this state for at least forty-five (45) days; and*
      - (3) *A sworn statement by the broker with whom the applicant desires to be affiliated certifying that, in the broker's opinion, the applicant is honest and trustworthy and that the broker will actively supervise and train the applicant during the period the license remains in effect.*
    - (f) *An application for a broker's license shall be accompanied by:*
      - (1) *The fee specified in § 62-13-308; and*
      - (2) *Satisfactory proof that the applicant:*
        - (A) *Is at least eighteen (18) years of age; and*
        - (B) *Has been a resident of this state for at least forty-five (45) days.*
    - (g) *Every two (2) years, as a requisite for the reissuance of an affiliate broker's license originally issued on or after July 1, 1980, the affiliate broker shall furnish certification of satisfactory completion of sixteen (16) classroom hours in real estate courses at any school, college or university approved by the commission.*
    - (h) *Within a period of three (3) years from the date of issuance of an original broker's license, the licensee shall, as a requisite for the reissuance of the license, furnish certification of satisfactory completion of an additional one hundred twenty (120) classroom hours in real estate at any school, college or university approved by the commission. Beginning with the license period immediately following the license period in which the licensee completes the one hundred twenty (120) hours of education specified in this subsection (h), the licensee of a broker's license originally issued after January 1, 2005, every two (2) years shall furnish certification of satisfactory completion of sixteen (16) classroom hours in real estate courses at any school, college or university approved by the commission as a requisite for the reissuance of the license.*
    - (i) *The commission shall, at least six (6) months prior to the deadline for furnishing the certification required by subsections (g) and (h), notify each licensee from whom the certification has not been received.*
    - (j) *Any person who desires a time-share salesperson license shall submit an application for examination and license to the commission on the prescribed form. The application shall be accompanied by:*
      - (1) *The fees specified in § 62-13-308 for examination and license;*
      - (2) *Satisfactory proof that the applicant is:*
        - (A) *At least eighteen (18) years of age; and*
        - (B) *A resident of this state;*
      - (3) *A sworn statement by the broker with whom the applicant desires to be affiliated certifying that, in the broker's opinion, the applicant is honest and trustworthy and that the broker will actively supervise and train the applicant during the period the license remains in effect; and*
      - (4) *Certification, by the broker with whom the applicant desires to be affiliated, stating that the applicant has completed a thirty (30) hour training program consisting of instruction in the fundamentals of the Tennessee Time-Share Act, compiled in title 66, chapter 32, part 1, and related topics.*
    - (k) *Any person who desires an acquisition agent license shall submit an application for examination and license to the commission on the prescribed form.*
      - (1) *The application shall be accompanied by:*
        - (A) *The fees specified in § 62-13-308 for examination and license;*
        - (B) *Proof satisfactory to the commission that the applicant is at least eighteen (18) years of age; and*

*(C) Proof satisfactory to the commission that the applicant is of good moral character.*

*(2) Compliance by an acquisition agent with the licensing requirements of this section shall constitute compliance with the registration requirements contained in § 66-32-139.*

*(l)(1) The commission shall require all applicants for initial licensure issued under this chapter, including, but not limited to, a time-share license, on or after January 1, 2014, to submit a complete and legible set of fingerprints, on a form prescribed by the commission or in such electronic format as the commission may require, to the commission or to the Tennessee bureau of investigation for the purpose of obtaining a criminal background check from the Tennessee bureau of investigation and the federal bureau of investigation.*

*(2) The commission shall refuse to issue a license to an applicant for initial licensure who does not comply with subdivision (l)(1); provided, that a licensee who requests to renew an existing license issued under this chapter, or obtain a broker license after being licensed as an affiliate broker, shall not be required to submit a set of fingerprints pursuant to this subsection (l).*

*(3) The commission shall conduct a criminal background check of each applicant described in subdivision (l)(1) by using information:*

*(A) Provided by the applicant under this subsection (l); and*

*(B) Made available to the commission by the Tennessee bureau of investigation, the federal bureau of investigation and any other criminal justice agency.*

*(4) The commission may:*

*(A) Enter into an agreement with the Tennessee bureau of investigation to administer a criminal background check required under this subsection (l); and*

*(B) Authorize the Tennessee bureau of investigation to collect from the applicant the costs incurred by the department in conducting the criminal background check.*

**62-16-101. [Repealed.]**

**62-16-102. [Repealed.]**

**62-16-103. [Repealed.]**

**62-20-102. Chapter definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Board" means the Tennessee collection service board;

(2) "Client" means any person who retains the services of a collection service and for such services directly provides the fee, commission or other compensation;

(3) "Collection service" means any person that engages in, or attempts to engage in, the collection of delinquent accounts, bills or other forms of indebtedness irrespective of whether the person engaging in or attempting to engage in collection activity has received the indebtedness by assignment or whether the indebtedness was purchased by the person engaging in, or attempting to engage in, the collection activity. "Collection service" includes, but is not limited to:

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(A) Any deputy sheriff, constable or other individual who, in the course of that person's duties, accepts any compensation other than that fixed by statute in connection with the collection of an account;

(B) Any person who, in the process of collecting that person's own accounts, uses or causes to be used any fictitious name that would indicate to a debtor that a third party is handling the accounts;

(C) Any person who offers for sale, gives away or uses any letter or form designed for use in the collection of accounts that deceives the receiver into believing that an account is in the hands of a third party, even though the letter or form may instruct the debtor to pay directly to the debtor's creditor; and

(D) Any person who engages in the solicitation of claims or judgments for the purpose of collecting or attempting to collect claims or judgments or who solicits the purchase of claims or judgments for the purpose of collecting or attempting to collect claims or judgments by engaging in or attempting to engage in collection activity relative to claims or judgments.

(4) "Collection service license" means a license granted to a collection service;

(5) "Financially responsible" means capable, as demonstrated to the board's satisfaction, of sound financial management and fiscal discretion. The board may deem to be not financially responsible any person who:

(A) Submits a balance sheet reflecting liabilities in excess of assets;

(B) Is unable to pay debts as they mature;

(C) Submits materially inaccurate financial information; or

(D) Issues a check to a client without sufficient funds for the payment of the check in full;

(6) [Deleted by 2013 amendment, effective April 23, 2013.]

(7) [Deleted by 2013 amendment, effective April 23, 2013.]

(8) "Person" means an individual, firm, corporation, association or other legal entity; and

(9) "Solicitor" means any individual who is employed by or under contract with a collection service to solicit accounts or sell collection service forms or systems on its behalf.

#### **62-20-108. Notice to board.**

The board shall be promptly notified in writing of any change in address, management or ownership of a collection service business.

#### **62-20-112. Expiration and renewal of licenses.**

(a) All licenses or identification cards shall expire the last day of the twenty-fourth month from issuance or renewal.

(b) Application for renewal of a collection service license shall be submitted to the board prior to the expiration date and shall be accompanied by:

(1) A fee as set by the board;

(2) Evidence of renewal of the bond or certificate of deposit under the terms required by this chapter;

(3) A current balance sheet prepared by a licensed public accountant or certified public accountant; and

(4) Proof that all taxes that are applicable to the collection service licensee

and that are then due and payable have been paid.

(c) All licenses shall be subject to late renewal for a period of sixty (60) days following their expiration date by payment of the prescribed fee plus a penalty as set by the board.

(d) [Deleted by 2013 amendment, effective April 23, 2013.]

**62-20-116. Actions required at expiration or revocation of license.**

(a) Upon the expiration or revocation of any license held under this chapter, the licensee shall:

(1) Within ninety (90) days, return or assign all uncollected accounts to the licensee's clients or their order;

(2) Not charge or receive any fee or compensation for the return or assignment of uncollected accounts;

(3) Not charge or receive any fee or compensation on any moneys received or collected subsequent to the expiration, suspension or revocation; and

(4) Within ninety (90) days, remit all moneys to the owners of the accounts on which the moneys were paid.

(b) This section shall not be construed to:

(1) Prohibit a bulk sale of the business, assets and good will of a collection service whose license becomes invalid; or

(2) Deprive a licensee of the privilege of late renewal granted by § 62-20-112.

(3) [Deleted by 2013 amendment, effective April 23, 2013.]

**62-20-125. [Repealed.]**

**62-20-126. [Repealed.]**

**62-32-313. Qualifying agents — Application for license — Requirements — Examination — Term of license — Renewal.**

(a) Anyone desiring to be licensed as a qualifying agent shall make written application to the board on forms prescribed by the board. The application shall be accompanied by an application fee as set by the board.

(b) An applicant shall meet all of the requirements for a registered employee as indicated in § 62-32-312(e). Application shall be accompanied by the documents required for employee registration as detailed in § 62-32-312(d).

(c) An applicant for qualifying agent shall meet the following combination of experience and educational requirements:

(1) The applicant must hold a four-year baccalaureate degree in electrical engineering, industrial technology, computer engineering, or industrial engineering from an accredited university or college acceptable to the board with at least two (2) years actual experience in the alarm industry;

(2) The applicant must hold an associates degree in engineering technology from an accredited two-year technical college acceptable to the board with at least four (4) years actual experience in the alarm industry; or

(3) The applicant must hold current certification by a national training program approved by the board in the field of work to be installed, serviced or monitored and have at least five (5) years of working experience in the alarm industry covering the actual installation of alarms.

(d) If the application is satisfactory to the board, the qualifying agent shall

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be entitled to an examination to determine the agent's qualifications. This examination may be written or oral, or both. The board shall be entitled to charge each applicant an examination fee as set by the board for each written or oral examination, or both.

(e) If the results of the examination of any applicant are satisfactory to the board, then it shall issue to the applicant a license as a qualified agent in this state. The board shall state the classifications in which the applicant is qualified to engage.

(f) Licenses as a qualifying agent shall expire on the last day of the twenty-fourth month following its issuance or renewal and shall become invalid on that date unless renewed.

(g) Renewal notices shall be mailed to the last known address of the qualified agent ninety (90) days prior to the expiration date of the license. The renewal must be received in the office of the board prior to the expiration of the license.

(h) It is the duty of the board to notify every person registered under this part by mail to the last known address of the date of expiration of the person's certificate of license and the amount of fee required for its renewal for two (2) years. The notice shall be mailed in accordance with this section.

(i) The fee to be paid for the renewal of a certificate of license after the expiration date shall be increased ten percent (10%) for each month or fraction of a month that payment for renewal is delayed; provided, that the maximum fee for a delayed renewal shall not exceed twice the normal fee.

(j) No qualifying agent shall be qualified to receive a renewal license when the agent has been in default in complying with this part for a period of three (3) months, and, in that event, the qualifying agent, in order to qualify under the law, shall make a new application as in the case of the issuance of the original license.

(k) The board shall not grant renewal of a qualifying agent license until it has received satisfactory evidence of continuing education during the previous two (2) years. The board shall promulgate rules to establish minimum satisfactory standards of continuing education.

(l) The board may, after notice and an opportunity for hearing, suspend, revoke or deny renewal of a license to a qualifying agent who is a qualifying agent for a person, firm, association or corporation that has had its certification suspended or revoked under § 62-32-319. The board shall in all cases before hearing any charges against any registrant furnish a written copy of the charges against the accused, including notice of the time and place where the charges will be heard, and give reasonable opportunity for the accused to be present and offer any evidence the accused may wish. The accused shall have the right to an attorney if the accused so desires. The revocation or suspension of license shall be in writing, stating the grounds upon which the board decision is based. The aggrieved person shall have the right to appeal from the decision.

(m) No qualifying agent may be the qualifying agent for more than one (1) business location.

#### **62-32-321. Counties and municipalities.**

(a) Counties and municipalities are prohibited from offering services as alarm systems contractors to the general public except as follows:

(1) Counties and municipalities may provide those services that would normally be provided by an alarm systems contractor for facilities that are wholly owned and occupied by that county or municipality; and

(2)(A) Counties and municipalities may provide monitoring or response services, or both, to alarm systems when deemed in the best public interest; provided, that:

(i) No charge is made by the county or municipality for the service unless the county or municipality was charging for the service on or before July 1, 1991;

(ii) Use of local governmental services shall not be mandatory; and

(iii) Response by local law enforcement, firefighters or other emergency personnel may not be conditional upon use of the services.

(B) Notwithstanding any language of subdivision (a)(2)(A)(i) to the contrary, no county or municipality shall impose or collect any charge for responding to a false alarm occasioned exclusively by a violent act of nature.  
(b) No county or municipality shall enact any legislation or promulgate any rules or regulations relating to the licensing of alarm businesses or alarm systems contractors required to be licensed under this part.

(c) On July 1, 1993, any provision of any legislation or rules or regulations of any county or municipality requiring the certifying or licensing of an alarm business or its employees shall be superseded by this part and no longer be effective.

(d) This part is not, however, intended to and does not prevent the legally constituted authority of any county or municipality by legislation, rules or regulations, and within the police power of the county or municipality, from requiring alarm businesses or alarm agents to register their names, addresses and license certificate numbers with the county or municipality within which they operate. The county or municipality may also require that alarm businesses give reasonable notice of termination of licenses or agents. No fee may be charged nor may any application be required by any county or municipality for the registration.

(e) Nothing in this part shall be construed to prohibit counties or municipalities from enacting and imposing penalties for false alarms; provided, that the penalties shall not exceed fifty dollars (\$50.00) for each false alarm.

**62-39-322. Nonresident licensees and certificate holders — Reciprocity — Fees.**

(a) If, in the determination of the commission, a state is deemed to have meaningful requirements for licensure and certification, then the commission shall grant reciprocal rights to licensees and certificate holders who are in good standing in that state.

(b) The commission shall set reasonable fees for the practice of appraisal in this state by licensees and certificate holders of other states that have been granted reciprocity.

**62-39-414. Biennial certification of system and process of verification of licensure of individual being added to appraiser panel.**

Each appraisal management company seeking to be registered shall certify to the commission on a biennial basis on a form prescribed by the commission that the appraisal management company has a system and process in place to

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verify that an individual being added to the appraiser panel for appraisal services within Tennessee of the appraisal management company holds a license in good standing in this state pursuant to this chapter.

**62-39-415. Biennial certification of system and process of verification of licensure of individual to whom appraisal management company is making assignments.**

Each appraisal management company seeking to be registered shall certify to the commission on a biennial basis on a form prescribed by the commission that the appraisal management company has a system in place to verify that an individual to whom the appraisal management company is making assignments for the completion of appraisals has not had a license or certification as an appraiser refused, denied, cancelled, revoked, or surrendered in lieu of a pending revocation on a regular basis.

**62-39-416. Biennial certification of system for periodic appraisal review.**

Each registered appraisal management company shall certify to the commission on a biennial basis that it has a system in place to perform an appraisal review on a periodic basis of the work of all appraisers who are performing appraisals in Tennessee for the appraisal management company to validate that the appraisals are being conducted in accordance with USPAP. An AMC shall report to the commission the results of any appraisal reviews in which an appraisal is found to be substantially non-compliant with USPAP, state laws or federal laws pertaining to appraisals.

**62-39-417. Biennial certification of maintenance of detailed records.**

Each appraisal management company seeking to be registered shall certify to the commission biennially that it maintains a detailed record of each service request for appraisal services within the state of Tennessee that it receives and of each appraiser who performs an appraisal for the appraisal management company in the state of Tennessee.

**62-76-101. Notice to applicants and holders of licenses, certifications, and registrations — Web site links to statutes, rules, policies and guidelines — Electronic notices.**

(a) Each board, commission, agency or other governmental entity created pursuant to this title shall notify each applicant for a license, certification or registration from the board, commission, agency or other governmental entity where to obtain a copy of any statutes, rules, policies and guidelines setting forth the prerequisites for the license, certification or registration and shall, upon request, make available to the applicant a copy of the statutes, rules, policies and guidelines.

(b) Each board, commission, agency or other governmental entity created pursuant to this title shall notify each holder of a license, certification or registration from the board, commission, agency or other governmental entity of changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies and guidelines, upon the issuance and upon each renewal of the holder's

license, certification or registration.

(c) Each board, commission, agency or other governmental entity created pursuant to this title shall establish and maintain a link or links on the entity's web site to the statutes, rules, policies and guidelines that are implemented or enforced by the entity and that impact an applicant for, or a holder of, a license, certification or registration from the entity.

(d)(1) Each board, commission, agency or other governmental entity created pursuant to this title shall allow each holder of a license, certification or registration from the board, commission, agency or other governmental entity to have the option of being notified by electronic mail of:

(A) Renewals of the holder's license, certification or registration;

(B) Any fee increases;

(C) Any changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies and guidelines; and

(D) Any meeting where changes in rules or fees are on the agenda. For purposes of this subdivision (d)(1)(D), the electronic notice shall be at least forty-five (45) days in advance of the meeting, unless it is an emergency meeting then the notice shall be sent as soon as is practicable.

(2) Each board, commission, agency or other governmental entity created pursuant to this title shall notify each holder of a license, certification or registration of the availability of receiving electronic notices pursuant to subdivision (d)(1) upon issuance or renewal of the holder's license, certification or registration.

### **63-1-137. Funds — Deposits and disbursements.**

(a) Notwithstanding any provision of law to the contrary, all moneys other than the state regulatory fee as provided for in former § 4-3-1011(b)(2) [transferred to § 9-4-5117] collected by any board attached to the division of health related boards shall be deposited in the state general fund and credited to a separate account for each such board.

(b) Disbursements from such accounts shall be made solely for the purpose of defraying expenses incurred in the implementation and enforcement of the board's area of regulation, including defraying costs to implement the Health Care Consumer Right-to-Know Act of 1998, compiled in chapter 51 of this title.

(c) No such expenses shall be paid from any other state funds other than provided for in former § 4-3-1011 [transferred to § 9-4-5117].

(d) Funds remaining in board accounts at the end of any fiscal year shall not revert to the general fund but shall remain available for expenditure in accordance with law.

### **63-1-139. Rules and regulations.**

(a) Each board, commission, committee, agency or other governmental entity created pursuant to this title, title 68, chapter 24, and title 68, chapter 140, part 3 shall notify each applicant for a license, certification or registration from such board, commission, committee, agency or other governmental entity where to obtain a copy of any statutes, rules, policies and guidelines setting forth the prerequisites for such license, certification or registration and shall, upon request, make available to the applicant a copy of such statutes, rules, policies and guidelines.

(b) Each board, commission, committee, agency or other governmental

entity created pursuant to this title, title 68, chapter 24 and title 68, chapter 140, part 3 shall notify each holder of a license, certification or registration from the board, commission, committee, agency or other governmental entity of changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies and guidelines, upon the issuance and upon each renewal of the holder's license, certification or registration.

(c) Each board, commission, committee, agency or other governmental entity created pursuant to this title, title 68, chapter 24 and title 68, chapter 140, part 3 shall establish and maintain a link or links on the entity's web site to the statutes, rules, policies and guidelines that are implemented or enforced by the entity and that impact an applicant for, or a holder of, a license, certification or registration from the entity.

(d)(1) Each board, commission, committee, agency or other governmental entity created pursuant to this title, title 68, chapter 24 and title 68, chapter 140, part 3 shall allow each holder of a license, certification or registration from the board, commission, committee, agency or other governmental entity to have the option of being notified by electronic mail of:

(A) Renewals of the holder's license, certification or registration;

(B) Any fee increases;

(C) Any changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies and guidelines; and

(D) Any meeting where changes in rules or fees are on the agenda. For purposes of this subdivision (d)(1)(D), the electronic notice shall be at least forty-five (45) days in advance of the meeting, unless it is an emergency meeting then the notice shall be sent as soon as is practicable.

(2) Each board, commission, agency or other governmental entity created pursuant to this title, title 68, chapter 24 and title 68, chapter 140, part 3 shall notify each holder of a license, certification or registration of the availability of receiving electronic notices pursuant to subdivision (d)(1) upon issuance or renewal of the holder's license, certification or registration.

**63-1-151. Report by practitioner to licensing board of indictment for offense involving sale or dispensing of controlled substances.**

(a)(1) Notwithstanding any other provision of this chapter or of chapter 3, chapters 5-9 or chapter 19 of this title, when a practitioner licensed under any of such chapters is under state or federal indictment in this state for an offense involving the sale or dispensing of controlled substances under state or federal law, the practitioner shall report the indictment to the practitioner's licensing board in writing within seven (7) calendar days of acquiring actual knowledge of the indictment. Such report shall include the jurisdiction in which the indictment is pending, if known, and shall also be accompanied by a copy of the indictment, if the practitioner has one.

(2) A district attorney general and appropriate attorneys for the federal government are strongly encouraged, when appropriate, to promptly notify a practitioner's licensing board when a practitioner covered under subdivision (a)(1) is indicted in this state for an offense involving the sale or dispensing of controlled substances under state or federal law.

(b) The knowing failure of a practitioner to submit the report required in

subdivision (a)(1) to the licensing board shall be considered unprofessional, dishonorable or unethical conduct and may be grounds for such licensing board to take disciplinary action against the practitioner's license. The fact an indictment was sealed and the practitioner could not have actual knowledge of its existence excuses the practitioner from discipline based on the failure of the practitioner to submit a report. However, the claim that the practitioner was not aware of the obligation required in subdivision (a)(1) may not excuse the practitioner from discipline based on the failure of the practitioner to submit a report.

(c) Upon receiving a report of an indictment pursuant to subdivision (a)(1), (a)(2) or from any other source, the practitioner's licensing board, through the board's consultant or other person designated by the board, shall within fifteen (15) calendar days, conduct an expedited review of the practitioner's conduct alleged in the indictment. The purpose of such expedited review shall be to determine if the matter merits an expedited investigation by the board. If so, such a directive shall be given to the department of health's office of investigations. All review activity under this subsection (c) shall be confidential pursuant to § 63-1-117(f).

(d) For the purposes of this section, "controlled substances" means substances regulated as controlled substances under title 39, chapter 17, part 4, or title 53, chapters 10 and 11, or the federal Controlled Substances Act, compiled at 21 U.S.C. § 801, et seq.

### **63-1-301. Part definitions.**

For purposes of this part, unless the context requires otherwise:

(1) "Advanced practice nurse" means any person licensed under chapter 7 of this title, who meets the requirements of § 63-7-126;

(2) "Department" means the department of health;

(3) "Medical doctor" means any person licensed under chapter 6 of this title;

(4) "Osteopathic physician" means any person licensed under chapter 9 of this title;

(5)(A) "Pain management clinic" means a privately-owned facility in which a medical doctor, an osteopathic physician, an advanced practice nurse, a physician assistant, or any other health care provider licensed under this title provides pain management services to patients, a majority of whom are issued a prescription for, or are dispensed, opioids, benzodiazepines, barbiturates, or carisoprodol and provides prescriptions for more than ninety (90) days in a twelve-month period. For purposes of determining if a clinic should be registered under this part, patients of health care providers who do not prescribe controlled substances shall be excluded from the count.

(B) "Pain management clinic" also means any privately owned clinic, facility, or office which advertises in any medium for any type of pain management services and in which one (1) or more employees or contractors prescribe controlled substances; and

(6) "Physician assistant" means any person licensed under chapter 19 of this title.

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**63-1-303. Regulation of licensed healthcare practitioners — Rules and regulations.**

(a) Each licensed healthcare practitioner who provides services at a pain management clinic shall continue to be regulated only by the board which has issued a license to that practitioner.

(b) On or before October 1, 2011, the commissioner of health, in consultation with the board of medical examiners, the board of osteopathic examination, the board of nursing, and the committee on physician assistants, shall promulgate rules necessary to implement this part, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) The rules adopted pursuant to subsection (b) shall address the following topics, among others:

(1) The operation of the clinic, including requirements:

(A) That patients have current and valid government issued identification or current health insurance card issued by either a government or private carrier; and

(B) That providers conduct urine drug screening in accordance with a written drug screening and compliance plan, which may include testing on initial assessment or upon new admission;

(2) Personnel requirements for the clinic;

(3) Training requirements for clinic providers who are regulated by that board;

(4) Patient records;

(5) Standards to ensure quality of patient care;

(6) Infection control;

(7) Health and safety requirements;

(8) Certificate application and renewal procedures and requirements;

(9) Data collection and reporting requirements;

(10) Inspections and complaint investigations; and

(11) Patient billing procedures.

**63-1-309. Disclosures — Restrictions on ownership — Documentation of controlled substances prescribed — Required medical director hours. [Effective until July 1, 2016. See the version effective on July 1, 2016.]**

(a)(1) In the application for a certificate or within ten (10) days of the occurrence of any of the events listed in subdivisions (a)(1)(A)-(C), a pain management clinic shall disclose whether any person who owns, co-owns or operates, or otherwise provides services in the clinic, an employee of the clinic, or a person with whom the clinic contracts for services:

(A) Has ever been denied, by any jurisdiction, a license under which the person may prescribe, dispense, administer, supply or sell a controlled substance;

(B) Has ever held a license issued by any jurisdiction, under which the person may prescribe, dispense, administer, supply or sell a controlled substance that has been restricted; or

(C) Has ever been subject to disciplinary action by any licensing entity for conduct that was the result of inappropriately prescribing, dispensing, administering, supplying or selling a controlled substance.

(2) The department may deny a certificate or renewal of a certificate to a pain management clinic under any of the circumstances listed in subdivision

(a)(1). An applicant who is denied a certificate or a renewal of a certificate may appeal the decision in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) A pain management clinic may not be owned wholly or partly by a person who has been convicted of, pled nolo contendere to, or received deferred adjudication for:

(1) An offense that constitutes a felony; or

(2) An offense that constitutes a misdemeanor, the facts of which relate to the distribution of illegal prescription drugs or a controlled substance or controlled substance analogue as defined in § 39-17-402.

(c) If any practitioner providing services at a pain management clinic prescribes controlled substances for the treatment of chronic nonmalignant pain, the practitioner must document in the patient's record the reason for prescribing that quantity.

(d) A medical director shall be on-site at least twenty percent (20%) of the clinic's weekly total number of operating hours. A medical director shall serve as medical director and provide services for no more than four (4) pain management clinics.

**63-1-309. Disclosures — Restrictions on ownership — Documentation of controlled substances dispensed or prescribed — Required medical director hours. [Effective on July 1, 2016. See the version effective until July 1, 2016.]**

*(a)(1) In the application for a certificate or within ten (10) days of the occurrence of any of the events listed in subdivisions (a)(1)(A)-(C), a pain management clinic shall disclose whether any person who owns, co-owns or operates, or otherwise provides services in the clinic, an employee of the clinic, or a person with whom the clinic contracts for services:*

*(A) Has ever been denied, by any jurisdiction, a license under which the person may prescribe, dispense, administer, supply or sell a controlled substance;*

*(B) Has ever held a license issued by any jurisdiction, under which the person may prescribe, dispense, administer, supply or sell a controlled substance that has been restricted; or*

*(C) Has ever been subject to disciplinary action by any licensing entity for conduct that was the result of inappropriately prescribing, dispensing, administering, supplying or selling a controlled substance.*

*(2) The department may deny a certificate or renewal of a certificate to a pain management clinic under any of the circumstances listed in subdivision (a)(1). An applicant who is denied a certificate or a renewal of a certificate may appeal the decision in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.*

*(b) A pain management clinic may not be owned wholly or partly by a person who has been convicted of, pled nolo contendere to, or received deferred adjudication for:*

*(1) An offense that constitutes a felony; or*

*(2) An offense that constitutes a misdemeanor, the facts of which relate to the distribution of illegal prescription drugs or a controlled substance or controlled substance analogue as defined in § 39-17-402.*

*(c) If any practitioner providing services at a pain management clinic*

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*prescribes more than a seventy-two-hour dose of controlled substances for the treatment of chronic nonmalignant pain, the practitioner must document in the patient's record the reason for prescribing that quantity.*

*(d) A medical director shall be on-site at least twenty percent (20%) of the clinic's weekly total number of operating hours. A medical director shall serve as medical director and provide services for no more than four (4) pain management clinics.*

### **63-1-310. Payments.**

(a) A pain management clinic may accept only a check or credit card in payment for services provided at the clinic, except as provided in subsection (b).

(b) A payment may be made in cash for a co-pay, coinsurance or deductible when the remainder of the charge for the services will be submitted to the patient's insurance plan for reimbursement.

### **63-1-311. Violations — Penalties.**

(a) A violation of this part, or a rule adopted under this part, is grounds for disciplinary action against a practitioner providing services at a pain management clinic certified under this part by the board which licensed that practitioner.

(b) A practitioner who provides pain management services at an uncertified pain management clinic is subject to an administrative penalty of no less than one thousand dollars (\$1,000) per day and which shall not exceed five thousand dollars (\$5,000) per day, imposed by the board which licensed that practitioner, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Before such a penalty may be assessed by the board, the board shall give at least thirty (30) days notice to the practitioner of the alleged violation of this part.

(c) An owner, co-owner, or operator of an uncertified pain management clinic is subject to an administrative penalty of no less than one thousand dollars (\$1,000) per day and which shall not exceed five thousand dollars (\$5,000) per day, imposed by the department of health, in accordance with the Uniform Administrative Procedures Act. Before such a penalty may be assessed by the department, the department shall give at least thirty (30) days' notice to the owner, co-owner, or operator of the alleged violation of this part.

### **63-1-313. Dispensing of controlled substances by pain management clinics or medical personnel working at pain management clinics.**

(a) Notwithstanding any provision of this title or title 53, chapters 10 and 11 to the contrary, no pain management clinic or medical doctor, osteopathic physician, advanced practice nurse with certificates of fitness to prescribe, or physician assistant working at a pain management clinic shall be permitted to dispense controlled substances; provided, however, that this subsection (a) shall not prohibit a medical doctor, osteopathic physician, advanced practice nurse with certificates of fitness to prescribe, or physician assistant working at a pain management clinic from providing to that practitioner's patient, without charge, a sample of a schedule IV or schedule V controlled substance in a quantity limited to an amount that is adequate to treat the patient for a

maximum of seventy-two (72) hours.

(b) For the purposes of this section, “controlled substance” has the meaning given in § 39-17-402.

**63-1-314. Reporting on prescription drug abuse and pain management clinics**

The commissioner of health and each appropriate occupational professional licensing board governing licensees who may legally prescribe or dispense controlled substances shall prepare a comprehensive report on actions relative to prescription drug abuse and pain management clinics to the general assembly no later than January 31 for actions in the prior calendar year. This report shall summarize the number of complaints received, frequent findings, and actions taken.

**63-1-401. Part definitions — Development of recommended treatment guidelines for prescribing certain prescription drugs.**

(a) As used in this part:

(1) “Commissioner” means the commissioner of health; and

(2) “Treatment guidelines” means systematically developed statements to assist health care providers in making patient decisions concerning appropriate medical care for specific clinical circumstances.

(b) By January 1, 2014, the commissioner shall develop recommended treatment guidelines for prescribing of opioids, benzodiazepines, barbiturates, and carisoprodol that can be used by prescribers in the state as a guide for caring for patients. This subsection (b) shall not apply to veterinarians.

(c) The commissioner shall review and update the guidelines by September 30 of each year, and shall cause them to be posted on the department’s web site.

(d) The treatment guidelines shall be submitted to each prescribing board that licenses health professionals who can legally prescribe controlled substances and to the board of pharmacy. Each board shall be charged with review of the treatment guidelines and determining how the guidelines are to be used by its licensees.

(e) Each board shall notify all of its licensees through routine bulletins or newsletters of the existence of the guidelines.

**63-1-402. Prescribers required to hold a current federal DEA license and to complete continuing education — Exceptions to application of part.**

(a) On or after July 1, 2014, all prescribers who hold a current federal drug enforcement administration (DEA) license and who prescribe controlled substances shall be required to complete a minimum of two (2) hours of continuing education related to controlled substance prescribing biennially to count toward the licensees’ mandatory continuing education.

(b) The continuing education must include instruction in the department’s treatment guidelines on opioids, benzodiazepines, barbiturates, and carisoprodol, and may include such other topics as medicine addiction, risk management tools, and other topics as approved by the respective licensing boards.

(c) This section shall not apply to veterinarians, providers practicing at a registered pain management clinic as defined in § 63-1-301 or to medical

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doctors or osteopathic physicians board certified by the American Board of Medical Specialties (ABMS), or American Osteopathic Association (AOA), or the American Board of Physician Specialties (ABPS) in one (1) or more of the following specialties or subspecialties:

- (1) Pain management;
- (2) Anesthesiology;
- (3) Physical medicine and rehabilitation;
- (4) Neurology; or
- (5) Rheumatology.

**63-2-103. Authority to promulgate regulations regarding retention of physician medical records — Limit on retention of mammography records.**

(a) The board of medical examiners is authorized to promulgate regulations regarding the retention of physician medical records as defined in § 63-2-101(c).

(b) Notwithstanding any law or rule to the contrary, such retention of mammography records shall not exceed ten (10) years.

**63-3-127. Drug prescriptions.**

(a) Any handwritten prescription order for a drug prepared by a podiatrist who is authorized by law to prescribe a drug must be legible so that it is comprehensible by the pharmacist who fills the prescription. The handwritten prescription order must contain the name of the prescribing podiatrist, the name and strength of the drug prescribed, the quantity of the drug prescribed, handwritten in letters or in numerals, instructions for the proper use of the drug and the month and day that the prescription order was issued, recorded in letters or in numerals or a combination thereof. The prescribing podiatrist must sign the handwritten prescription order on the day it is issued, unless it is a standing order issued in a hospital, a nursing home or an assisted care living facility as defined in § 68-11-201.

(b) Any typed or computer-generated prescription order for a drug issued by a podiatrist who is authorized by law to prescribe a drug must be legible so that it is comprehensible by the pharmacist who fills the prescription order. The typed or computer-generated prescription order must contain the name of the prescribing podiatrist, the name and strength of the drug prescribed, the quantity of the drug prescribed, recorded in letters or in numerals, instructions for the proper use of the drug, and the month and day that the typed or computer-generated prescription order was issued, recorded in letters or in numerals or a combination thereof. The prescribing podiatrist must sign the typed or computer-generated prescription order on the day it is issued, unless it is a standing order issued in a hospital, nursing home or an assisted care living facility as defined in § 68-11-201.

(c) Nothing in this section shall be construed to prevent a podiatrist from issuing a verbal prescription order.

(d)(1) All handwritten, typed or computer-generated prescription orders must be issued on either tamper-resistant prescription paper or printed utilizing a technology that results in a tamper-resistant prescription that meets the current centers for medicare and medicaid service guidance to state medicaid directors regarding § 7002(b) of the United States Troop

Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, P.L. 110-28, and meets or exceeds specific TennCare requirements for tamper-resistant prescriptions.

(2) Subdivision (d)(1) shall not apply to prescriptions written for inpatients of a hospital, outpatients of a hospital where the doctor or other person authorized to write prescriptions writes the order into the hospital medical record and then the order is given directly to the hospital pharmacy and the patient never has the opportunity to handle the written order, a nursing home or an assisted care living facility as defined in § 68-11-201 or inpatients or residents of a mental health hospital or residential facility licensed under title 33 or individuals incarcerated in a local, state or federal correctional facility.

### **63-5-109. Exemptions.**

The following persons, acts, practices and operations are exempt from the other provisions of this chapter:

(1) The practice of their professions by physicians or surgeons licensed as such under the laws of this state, unless they practice dentistry as a specialty;

(2) The practice of dentistry and dental hygiene in the discharge of their official duties by graduate dentists and by dental hygienists in the United States public health service, army, navy, air force, coast guard or veterans administration;

(3) The practice of dentistry by licensed dentists or the practice of dental hygiene by licensed dental hygienists of other states or countries at meetings of the Tennessee Dental Association or Pan Tennessee Dental Association, or component parts thereof, alumni meetings of dental colleges or any other like dental organizations while appearing as clinicians;

(4) Licensed dentists or dental hygienists of other states who are called into Tennessee by licensed dentists of this state for consultative or operative purposes if the board or its designee gives discretionary advance approval in each such instance;

(5) The practice of dentistry or of dental hygiene by graduates of schools or colleges recognized by the board who are duly licensed in other states in the discharge of their official duties in state-supported institutions or official health agencies or other special projects approved by the board between the time of their employment as such and the next examination and licensing by the board;

(6) The practice of dentistry or of dental hygiene by students under the supervision of instructors in any dental school, college or dental department of any school, college, university or school of dental hygiene recognized by the board, but such activities shall not be carried on for profit;

(7) The giving by a registered nurse anesthetist of any anesthetic for a dental operation under the direct supervision of a licensed dentist;

(8) The construction, reproduction, restoration, alteration or repair of bridges, crowns, dentures or any other prosthetic or orthodontic appliances or materials to be used or worn as substitutes for natural teeth or for correction or regulation of natural teeth, upon order, prescription or direction of a licensed dentist, when the impressions, casts or models thereof have been made or taken by a licensed and registered dentist, a licensed and

registered dental hygienist under the direct supervision of a licensed and registered dentist or a registered dental assistant under the direct supervision of a licensed and registered dentist; provided, that such prosthetic dentures or orthodontic appliances or bridges or the services rendered in construction, repair, restoration or alteration thereof are not advertised, other than in a professional or trade journal, or by direct mail to licensed dentists or other laboratories and are not sold or delivered directly or indirectly to the public by any unlicensed person or dental laboratory, either as principal or as agent;

(9) Dental interns and externs or graduates of dental and dental hygiene schools or colleges recognized by the board employed by licensed hospitals or other agencies recognized and approved by the board;

(10) Personnel involved in research or developmental projects, approved by the board, that are under the auspices and direction of a recognized educational institution or the department of health;

(11) Graduates of dental schools or colleges serving as clinical instructors in board-recognized teaching institutions, while performing only those duties required by and under the supervision of such teaching institutions, upon completing prescribed registration forms and payment of a fee as set by the board; however, such exemption shall be confined to the interim immediately prior to the next scheduled applicable examination of the board and shall not be extended if the applicant does not successfully pass the examination;

(12) Dentists and dental hygienists duly licensed in other states who desire to work with special projects recognized and approved by the board may do so under the sponsorship of a local dentist and the auspices of the local dental society for a period of six (6) months;

(13) Dentists or dental hygienists duly licensed in other states practicing within authorized Tennessee department of health programs or programs affiliated with the Tennessee department of health for a period not to exceed twenty-four (24) months;

(14) The application of fluoride varnish to the teeth of at-risk, underserved persons in or under the auspices of a state, county or municipal public health clinic by public health nurses or nurse practitioners;

(15) The application of dental sealants to the teeth of individuals in a setting under the direction of a state or local health department by licensed hygienists, without requiring an evaluation by a dentist prior to such application, under a protocol established by the state or a metropolitan health department; or

(16) The application of topical fluoride to the teeth of individuals in a setting under the direction of a state or local health department by licensed hygienists, without requiring an evaluation by a dentist prior to such application, under a protocol established by the state or a metropolitan health department.

### **63-5-122. Drug prescriptions.**

(a) Licensed dentists of this state may dispense, prescribe or otherwise distribute drugs rational to the practice of dentistry, and any prescriptions shall be written in accordance with state and federal drug laws.

(b) Licensed pharmacists of this state may fill prescriptions of licensed dentists of this state for any drug necessary or proper to the practice of

dentistry.

(c) Any handwritten prescription order for a drug prepared by a dentist who is authorized by law to prescribe a drug must be legible so that it is comprehensible by the pharmacist who fills the prescription. The handwritten prescription order must contain the name of the prescribing dentist, the name and strength of the drug prescribed, the quantity of the drug prescribed, handwritten in letters or in numerals, instructions for the proper use of the drug, and the month and day that the prescription order was issued, recorded in letters or in numerals or a combination thereof. The prescribing dentist must sign the handwritten prescription order on the day it is issued, unless it is a standing order issued in a hospital, a nursing home or an assisted care living facility as defined in § 68-11-201.

(d) Any typed or computer-generated prescription order for a drug issued by a dentist who is authorized by law to prescribe a drug must be legible so that it is comprehensible by the pharmacist who fills the prescription order. The typed or computer generated prescription order must contain the name of the prescribing dentist, the name and strength of the drug prescribed, the quantity of the drug prescribed, recorded in letters or in numerals, instructions for the proper use of the drug, and the month and day that the typed or computer generated prescription order was issued, recorded in letters or in numerals or a combination thereof. The prescribing dentist must sign the typed or computer generated prescription order on the day it is issued, unless it is a standing order issued in a hospital, nursing home or an assisted care living facility as defined in § 68-11-201.

(e) Nothing in this section shall be construed to prevent a dentist from issuing a verbal prescription order.

(f)(1) All handwritten, typed or computer-generated prescription orders must be issued on either tamper-resistant prescription paper or printed utilizing a technology that results in a tamper-resistant prescription that meets the current centers for medicare and medicaid service guidance to state medicaid directors regarding § 7002(b) of the United States Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, P.L. 110-28, and meets or exceeds specific TennCare requirements for tamper-resistant prescriptions.

(2) Subdivision (f)(1) shall not apply to prescriptions written for inpatients of a hospital, outpatients of a hospital where the doctor or other person authorized to write prescriptions writes the order into the hospital medical record and then the order is given directly to the hospital pharmacy and the patient never has the opportunity to handle the written order, a nursing home or an assisted care living facility as defined in § 68-11-201 or inpatients or residents of a mental health hospital or residential facility licensed under title 33 or individuals incarcerated in a local, state or federal correctional facility.

(g) Any written, printed or computer-generated order for a Schedule II controlled substance prepared by a dentist who is authorized by law to prescribe a drug must be legibly printed or typed as a separate prescription order. The written, printed or computer-generated order must contain all information otherwise required by law. The prescribing dentist must sign the written, printed or computer-generated order on the day it is issued.

**63-6-207. Application for certificate — Special training licenses — St. Jude Children's Research Hospital global collaboration license.**

(a) Persons desiring to practice medicine or surgery in this state shall make application in writing to the board, which application shall be accompanied by:

(1) If a United States or Canadian medical school graduate:

(A) A certificate from a medical school whose curriculum is approved by the American Medical Association or its extant accreditation program for medical education, or its successor;

(B) A nonrefundable application fee as set by the board and by an examination fee prescribed in this section;

(C) Evidence of the satisfactory completion of a one-year United States training program approved by the American Medical Association or its extant accreditation program for medical education, or its successor;

(D) Sufficient evidence of good moral character; and

(E) Evidence of being legally entitled to live and work in the United States if not a citizen of the United States or Canada;

(2) If an international medical school graduate:

(A) A certificate from a medical school whose curriculum is judged to be acceptable by the board;

(B) A copy of a permanent Educational Commission for Foreign Medical Graduates (E.C.F.M.G.) certificate;

(C) A nonrefundable application fee as set by the board and by an examination fee prescribed in this section;

(D) Sufficient evidence of good moral character;

(E) Evidence of being a citizen of the United States or Canada or legally entitled to live and work in the United States; and

(F) Evidence of satisfactory completion of a three-year residency program approved by the American Medical Association or its extant accreditation program for medical education, or its successor. Such person may apply to the board for licensure and/or testing in accordance with this chapter within three (3) months of completion of the residency program if satisfactory performance in such residency is demonstrated to the satisfaction of the board.

(b) All applicants shall present themselves before the board or the board's administrative designee for examination. The board may question in such subjects as the board may deem appropriate. As its qualifying examination, the board accepts the Federation Licensing Examination (FLEX), and/or the National Board of Medical Examiners examination and/or the United States Medical Licensing Examination or its successor examination. Applicants shall successfully complete the United States Medical Licensing Examination within seven (7) years from the date of whichever step of the examination was successfully completed first. An applicant is considered to have successfully completed a step of the examination on the date that the step was taken and not the date on which the passing score was made public by the examination agency; provided, however, that the board is authorized to promulgate rules and regulations creating exceptions that will extend the seven-year time frame provided in this subsection (b). In addition, the board reserves the right to write its own state board examination or contract with other national testing organizations. The board reserves the right to desig-

nate its administrative staff to administer the licensing examinations and to collect such application and examination fees as the board, in its discretion, may deem necessary.

(c) The members of the board also have the right to examine all applicants in such oral examinations as they may deem necessary.

(d) The board is authorized in its discretion to issue special training licenses to medical interns, residents and fellows who have met all other qualifications for licensure contained in this chapter and the rules and regulations promulgated pursuant thereto, with the exception of having completed the necessary residency or training programs required by subdivision (a)(1)(C) and/or (a)(2)(F) and the licensure examination. The board also is authorized to promulgate rules and regulations to implement this new licensure category. The initial set of these rules may be processed as emergency rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. These special training licenses will be governed by the following:

(1) Such licenses shall be issued only to medical interns, residents and fellows while participating in a training program of one of the accredited medical schools or of one of such medical school's affiliated teaching hospitals in Tennessee, performing duties assigned to meet the requirements of such program, and while under the supervision and control of a physician fully licensed to practice medicine in Tennessee;

(A) No person holding a special training license is permitted to practice medicine outside of such person's duties and responsibilities in the training program without being fully licensed to practice medicine in Tennessee. Termination of participation in the training program for which the special license was issued for any reason terminates that license;

(B) It is the responsibility of the program director or the dean responsible for the training program to submit the necessary information and applications on behalf of each applicant. It also is the responsibility of the program director or the dean to notify the board of the termination of the applicant's participation in the training program, whether by completion of the program or for any other reason;

(C) The board may impose fees to accompany each individual application for a special training license; and

(D) Recipients of the special training license shall not be subject to the occupational tax levied by § 67-4-1702(a)(4)(G).

(2) Notwithstanding the provisions of subdivision (d)(1), medical interns, residents and fellows who do not hold a special training license pursuant to this subsection (d) are exempt from the requirement of a license to practice medicine or surgery in this state when such medical interns, residents and clinical fellows are participating in a training program of one of the accredited medical schools or of one of its affiliated teaching hospitals in Tennessee, performing duties assigned to meet the requirements of such program, and while under the supervision and control of a physician fully licensed to practice medicine or surgery in the state of Tennessee. No such intern, resident or clinical fellow is permitted to practice medicine or surgery outside of that person's duties and responsibilities in such training program without being fully licensed to practice medicine or surgery in the state of Tennessee;

(A) It is the responsibility of the program director or the dean responsible for the training program to apply to the board for an exemption for

each such medical intern, resident or clinical fellow. Moreover, it is the responsibility of such program director or dean to notify the board of the termination of the applicant's participation in the training program, whether by completion of the program or for any other reason;

(B) The board may impose a fee, to accompany each application for exemption; and

(C) Eligibility for the exemption provided for in this subdivision (d)(2) shall apply to all eligible persons in training on April 8, 1994, or thereafter.

(e) The board or the board's designee is specifically authorized to conduct applicant interviews periodically as it deems necessary on a case by case basis.

(f)(1)(A) The general assembly finds that St. Jude Children's Research Hospital is unique as a research center hospital in this state and this nation for protocol-based therapy and treatment of children and adolescents with newly diagnosed untreated or suspected cancer, HIV infections, or certain hematologic, immunologic, or genetic diseases. St. Jude Children's Research Hospital's experts are involved in research and treatment in the fields of hematology, oncology, bone marrow transplantation, immunology, genetic diseases and infectious diseases. The hospital's research involves both basic and clinical science and it is a National Cancer Institute Comprehensive Cancer Center. The general assembly finds that supporting research and treatment by qualified physicians and researchers at St. Jude Children's Research Hospital by means of a special St. Jude Children's Research Hospital global collaboration license would substantially benefit the state of Tennessee, the practice of medicine and the health of persons benefitting from treatment or research conducted at the hospital.

(B) The board is authorized in its discretion to issue a special St. Jude Children's Research Hospital global collaboration license to physicians who have met all other qualifications for licensure contained in this chapter and the rules and regulation promulgated pursuant to this chapter, with the exception of having completed the necessary residency or training programs required by subdivision (a)(1)(C) or (a)(2)(F). The board is also authorized to promulgate rules and regulations to implement this new special licensure category.

(2) These special St. Jude Children's Research Hospital global collaboration licenses will be governed by the following:

(A) Such license shall be issued only to physicians while employed by St. Jude Children's Research Hospital;

(B) No person holding a special St. Jude Children's Research Hospital global collaboration license is permitted to practice medicine outside of such person's duties and responsibilities as an employee of St. Jude Children's Hospital without being fully licensed to practice medicine in Tennessee. Termination of employment with St. Jude Children's Research Hospital for any reason terminates the special license;

(C) It is the responsibility of St. Jude Children's Research Hospital to submit the necessary information and applications on behalf of each applicant. It is also the responsibility of St. Jude Children's Research Hospital to notify the board of the termination of the applicant's employment; and

(D) The board may impose fees to accompany each individual application for this special license.

**63-6-236. Drug prescriptions.**

(a) Any handwritten prescription order for a drug prepared by a physician or surgeon who is authorized by law to prescribe a drug must be legible so that it is comprehensible by the pharmacist who fills the prescription. The handwritten prescription order must contain the name of the prescribing physician or surgeon, the name and strength of the drug prescribed, the quantity of the drug prescribed, handwritten in letters or in numerals, instructions for the proper use of the drug and the month and day that the prescription order was issued, recorded in letters or in numerals or a combination thereof. The prescribing physician or surgeon must sign the handwritten prescription order on the day it is issued, unless the prescription order is:

(1) Issued as a standing order in a hospital, a nursing home or an assisted care living facility as defined in § 68-11-201; or

(2) Prescribed by a physician or surgeon in the department of health or local health departments or dispensed by the department of health or a local health department as stipulated in § 63-10-205.

(b) Any typed or computer-generated prescription order for a drug issued by a physician or surgeon who is authorized by law to prescribe a drug must be legible so that it is comprehensible by the pharmacist who fills the typed or computer-generated prescription order. The prescription order must contain the name of the prescribing physician or surgeon, the name and strength of the drug prescribed, the quantity of the drug prescribed, recorded in letters or in numerals, instructions for the proper use of the drug and the month and day that the typed or computer-generated prescription order was issued, recorded in letters or in numerals or a combination thereof. The prescribing physician or surgeon must sign the typed or computer-generated prescription order on the day it is issued, unless the prescription order is:

(1) Issued as a standing order in a hospital, nursing home or an assisted care living facility as defined in § 68-11-201; or

(2) Prescribed by a physician or surgeon in the department of health or local health departments or dispensed by the department of health or a local health department as stipulated in § 63-10-205.

(c) Nothing in this section shall be construed to prevent a physician or surgeon from issuing a verbal prescription order.

(d)(1) All handwritten, typed or computer-generated prescription orders must be issued on either tamper-resistant prescription paper or printed utilizing a technology that results in a tamper-resistant prescription that meets the current centers for medicare and medicaid service guidance to state medicaid directors regarding § 7002(b) of the United States Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, P.L. 110-28, and meets or exceeds specific TennCare requirements for tamper-resistant prescriptions.

(2) Subdivision (d)(1) shall not apply to prescriptions written for inpatients of a hospital, outpatients of a hospital where the doctor or other person authorized to write prescriptions, writes the order into the hospital medical record and then the order is given directly to the hospital pharmacy and the patient never has the opportunity to handle the written order, a nursing home or an assisted care living facility as defined in § 68-11-201 or inpatients or residents of a mental health hospital or residential facility licensed under title 33 or individuals incarcerated in a local, state or federal correctional facility.

**63-6-244. Interventional pain management.**

(a) A physician licensed pursuant to this chapter may only practice interventional pain management if the licensee is either:

(1) Board certified through the American Board of Medical Specialties (ABMS) or the American Board of Physician Specialties (ABPS)/American Association of Physician Specialists (AAPS) in one of the following medical specialties:

- (A) Anesthesiology;
- (B) Neurological surgery;
- (C) Orthopedic surgery;
- (D) Physical medicine and rehabilitation;
- (E) Radiology; or

(F) Any other board certified physician who has completed an ABMS subspecialty board in pain medicine or completed an ACGME-accredited pain fellowship;

(2) A recent graduate in a medical specialty listed in subdivision (a)(1) not yet eligible to apply for ABMS or ABPS/AAPS board certification; provided, that there is a practice relationship with a physician who meets the requirements of subdivision (a)(1) or an osteopathic physician who meets the requirements of § 63-9-119(a)(1);

(3) A licensee who is not board certified in one of the specialties listed in subdivision (a)(1) but is board certified in a different ABMS or ABPS/AAPS specialty and has completed a post-graduate training program in interventional pain management approved by the board;

(4) A licensee who serves as a clinical instructor in pain medicine at an accredited Tennessee medical training program; or

(5) A licensee who has an active pain management practice in a clinic accredited in outpatient interdisciplinary pain rehabilitation by the commission on accreditation of rehabilitation facilities or any successor organization.

(b) For purposes of this section, “interventional pain management” is the practice of performing invasive procedures involving any portion of the spine, spinal cord, sympathetic nerves of the spine or block of major peripheral nerves of the spine in any setting not licensed under title 68, chapter 11.

(c) The board is authorized to define through rulemaking the scope and length of the practice relationship established in subdivision (a)(2).

(d) A physician who provides direct supervision of an advanced practice nurse or a physician’s assistant pursuant to § 63-7-126 or § 63-19-107 must meet the requirements set forth in subdivision (a)(1) or (a)(3).

(e) A physician who violates this section is subject to disciplinary action by the board pursuant to § 63-6-214, including, but not limited to, civil penalties of up to one thousand dollars (\$1,000) for every day this section is violated.

**63-6-245. Notice to patients of determination that patient has dense or extremely dense breasts. [Effective on January 1, 2014.]**

(a) As used in this section, “physician” means an individual authorized by this chapter to practice medicine and surgery or osteopathic medicine and surgery pursuant to chapter 9.

(b) If a physician has determined, after a mammogram is performed, that a patient has dense breasts or extremely dense breasts, based on the breast

*imaging reporting and data system established by the American College of Radiology, the facility where the mammogram was performed shall provide the following notice to the patient:*

*Your mammogram shows that your breast tissue is dense. Dense breast tissue is common and is not abnormal. However, dense breast tissue can make it harder to evaluate the results of your mammogram and may also be associated with an increased risk of breast cancer. This information about the results of your mammogram is given to you to raise your awareness and to inform your conversations with your doctor. Together, you can decide which screening options are right for you. A report of your results was sent to your physician.*

*(c) This section shall become operative on January 1, 2014. Nothing in this section shall be construed to create or impose liability for failing to comply with the requirements of this section. Nothing in this section shall be deemed to create a duty of care or other legal obligation beyond the duty to provide notice as set forth in this section. Nothing in this section shall be deemed to require a notice that is inconsistent with the provisions of the federal Mammography Quality Standards Act, as compiled in 42 U.S.C. § 263b or any regulations promulgated pursuant to that act.*

### **63-6-703. Part definitions.**

As used in this part, unless the context otherwise requires:

(1) "Health care provider" means any physician, surgeon, dentist, nurse, optometrist or other practitioner of a health care discipline, the professional practice of which requires licensure or certification under the provisions of this title or under a comparable provision of law of another state, territory, district or possession of the United States;

(2) "Licensed health care provider" means any health care provider holding a current license or certificate issued under:

(A) This title; or

(B) A comparable provision of the law of another state, territory, district or possession of the United States;

(3) "Regularly practice" means to practice for more than sixty (60) days within any ninety-day period;

(4) "Sponsoring organization" means any organization that organizes or arranges for the voluntary provision of health care services and that registers with the department of health as a sponsoring organization in accordance with § 63-6-706 and charges recipients based on one (1) of the following criteria:

(A) On a sliding scale according to income;

(B) A fee at the time of service of no more than the state regulatory fee paid biennially as provided for in former § 4-3-1011 [transferred to § 9-4-5117]; or

(C) No fee to the recipient; and

(5) "Voluntary provision of health care services" means the providing of professional health services by the health care provider without charge to the recipient of the services or to a third party. Nothing shall preclude a health care provider from collecting the charges described in § 63-6-703(4)(A) or (4)(B) on behalf of the sponsoring organization as long as the health care provider retains none of the payment and forwards all collections to the sponsoring organization.

**63-7-123. Certified nurse practitioners — Drug prescriptions — Temporary certificate — Rules and regulations.**

(a) The board shall issue a certificate of fitness to nurse practitioners who meet the qualifications, competencies, training, education and experience, pursuant to § 63-7-207(14), sufficient to prepare such persons to write and sign prescriptions and/or issue drugs within the limitations and provisions of § 63-1-132.

(b)(1) A nurse who has been issued a certificate of fitness as a nurse practitioner pursuant to § 63-7-207 and this section shall file a notice with the board, containing the name of the nurse practitioner, the name of the licensed physician having supervision, control and responsibility for prescriptive services rendered by the nurse practitioner and a copy of the formulary describing the categories of legend drugs to be prescribed and/or issued by the nurse practitioner. The nurse practitioner shall be responsible for updating this information.

(2)(A) The nurse practitioner who holds a certificate of fitness shall be authorized to prescribe and/or issue controlled substances listed in Schedules II, III, IV and V of title 39, chapter 17, part 4 upon joint adoption of physician supervisory rules concerning controlled substances pursuant to subsection (d).

(B) Notwithstanding subdivision (b)(2)(A), a nurse practitioner shall not prescribe Schedules II, III and IV controlled substances unless such prescription is specifically authorized by the formulary or expressly approved after consultation with the supervising physician before the initial issuance of the prescription or dispensing of the medication.

(C) A nurse practitioner who had been issued a certificate of fitness may only prescribe or issue a Schedule II or III opioid listed on the formulary for a maximum of a non-refillable, thirty-day course of treatment unless specifically approved after consultation with the supervising physician before the initial issuance of the prescription or dispensing of the medication. This subdivision (b)(2)(C) shall not apply to prescriptions issued in a hospital, a nursing home licensed under title 68, or inpatient facilities licensed under title 33.

(3)(A) Any prescription written and signed or drug issued by a nurse practitioner under the supervision and control of a supervising physician shall be deemed to be that of the nurse practitioner. Every prescription issued by a nurse practitioner pursuant to this section shall be entered in the medical records of the patient and shall be written on a preprinted prescription pad bearing the name, address and telephone number of the supervising physician and of the nurse practitioner, and the nurse practitioner shall sign each prescription so written. Where the preprinted prescription pad contains the names of more than one (1) physician, the nurse practitioner shall indicate on the prescription which of those physicians is the nurse practitioner's primary supervising physician by placing a checkmark beside or a circle around the name of that physician.

(B) Any handwritten prescription order for a drug prepared by a nurse practitioner who is authorized by law to prescribe a drug must be legible so that it is comprehensible by the pharmacist who fills the prescription. The handwritten prescription order must contain the name of the prescribing nurse practitioner, the name and strength of the drug prescribed,

the quantity of the drug prescribed, handwritten in letters or in numerals, instructions for the proper use of the drug and the month and day that the prescription order was issued, recorded in letters or in numerals or a combination thereof. The prescribing nurse practitioner must sign the handwritten prescription order on the day it is issued, unless the prescription order is:

(i) Issued as a standing order in a hospital, a nursing home or an assisted care living facility as defined in § 68-11-201; or

(ii) Prescribed by a nurse practitioner in the department of health or local health departments or dispensed by the department of health or a local health department as stipulated in § 63-10-205.

(C) Any typed or computer-generated prescription order for a drug issued by a nurse practitioner who is authorized by law to prescribe a drug must be legible so that it is comprehensible by the pharmacist who fills the prescription order. The typed or computer-generated prescription order must contain the name of the prescribing nurse practitioner, the name and strength of the drug prescribed, the quantity of the drug prescribed, recorded in letters or in numerals, instructions for the proper use of the drug and the month and day that the typed or computer-generated prescription order was issued, recorded in letters or in numerals or a combination thereof. The prescribing nurse practitioner must sign the typed or computer-generated prescription order on the day it is issued, unless the prescription order is:

(i) Issued as a standing order in a hospital, nursing home or an assisted care living facility as defined in § 68-11-201; or

(ii) Prescribed by a nurse practitioner in the department of health or local health departments or dispensed by the department of health or a local health department as stipulated in § 63-10-205.

(D) Nothing in this section shall be construed to prevent a nurse practitioner from issuing a verbal prescription order.

(E)(i) All handwritten, typed or computer-generated prescription orders must be issued on either tamper-resistant prescription paper or printed utilizing a technology that results in a tamper-resistant prescription that meets the current centers for medicare and medicaid service guidance to state medicaid directors regarding § 7002(b) of the United States Troop Readiness, Veterans' Care, Katrina Recovery and Iraq Accountability Appropriations Act of 2007, P.L. 110-28, and meets or exceeds specific TennCare requirements for tamper-resistant prescriptions.

(ii) Subdivision (b)(3)(E)(i) shall not apply to prescriptions written for inpatients of a hospital, outpatients of a hospital where the doctor or other person authorized to write prescriptions writes the order into the hospital medical record and then the order is given directly to the hospital pharmacy and the patient never has the opportunity to handle the written order, a nursing home or an assisted care living facility as defined in § 68-11-201 or inpatients or residents of a mental health hospital or residential facility licensed under title 33 or individuals incarcerated in a local, state or federal correctional facility.

(F) Any written, printed or computer-generated prescription order for a Schedule II controlled substance prepared by an advanced practice nurse who is authorized by law to prescribe a drug must be printed or typed as

a separate prescription order. The written, printed or computer-generated prescription order must contain all information otherwise required by law. The prescribing advanced practice nurse must sign the written, printed or computer-generated prescription order on the day it is issued.

(4) The nurse practitioner shall maintain a copy of the protocol the nurse practitioner is using at the nurse practitioner's practice location and shall make the protocol available upon request by the board of nursing, the board of medical examiners or authorized agents of either board.

(c)(1) The board may issue a temporary certificate of fitness to a registered nurse who:

(A) Is licensed to practice in Tennessee;

(B) Has a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills that includes three (3) quarter hours of pharmacology instruction or its equivalent; and

(C) Has applied for examination and/or is awaiting examination results for national certification as a first-time examinee in an appropriate nursing specialty area.

(2) Such temporary certificate shall remain valid until the examination results are obtained. The holder of a temporary certificate issued under the provisions of this subsection (c) who has not received the results of the examination shall work only under the supervision and control of a certified nurse practitioner or physician.

(d) Any rules that purport to regulate the supervision of nurse practitioners by physicians shall be jointly adopted by the board of medical examiners and the board of nursing.

### **63-7-126. Advanced practice nurses.**

(a) "Advanced practice nurse" means a registered nurse with a master's degree or higher in a nursing specialty and national specialty certification as a nurse practitioner, nurse anesthetist, nurse midwife or clinical nurse specialist.

(b) Nurse practitioners, nurse anesthetists, nurse midwives and clinical nurse specialists holding such education and practice credentials shall apply to the board for a certificate to practice as an advanced practice nurse, including authorization to use the title "advanced practice nurse" or the abbreviation "APN". No other person shall assume such title or use such abbreviation or any other words, letters or signs to indicate that the person using the same is an advanced practice nurse.

(c) An applicant for a certificate to practice as an advanced practice nurse shall pay an initial fee as set by the board as well as a biennial renewal fee as set by the board.

(d) A nurse practitioner, nurse anesthetist, nurse midwife or clinical nurse specialist who holds a Tennessee registered nurse license in good standing and current national specialty certification in the advanced practice specialty shall be eligible for a certificate to practice as an advanced practice nurse on May 22, 2002, and shall be exempt from the requirement of a master's degree or higher in the nursing specialty if licensed in Tennessee and holding national specialty certification prior to July 1, 2005. Notwithstanding the previous requirements, a nurse anesthetist shall be eligible for a certificate to practice as an advanced practice nurse if the nurse anesthetist graduated prior to January 1, 1999, from a nurse anesthesia educational program approved by the American

Association of Nurse Anesthetists Council on Accreditation.

(e) With the exception of subsection (f), nothing in this section shall be interpreted to alter or change the current law as it existed on May 22, 2002, regarding prescriptive rights, supervision or scope of practice for nurse anesthetists regulated under this title, nurse midwives as described in § 56-7-2407, clinical nurse specialists or certified nurse practitioners as defined in § 63-7-123. Nor shall anything in this section be interpreted to allow any board or other entity to promulgate rules that would alter or change the law as it existed on May 22, 2002, regarding such prescriptive rights, supervision or scope of practice.

(f) An advanced practice nurse shall only perform invasive procedures involving any portion of the spine, spinal cord, sympathetic nerves of the spine or block of major peripheral nerves of the spine in any setting not licensed under title 68, chapter 11 under the direct supervision of a Tennessee physician licensed pursuant to chapter 6 or 9 of this title who is actively practicing spinal injections and has current privileges to do so at a facility licensed pursuant to title 68, chapter 11. The direct supervision provided by a physician in this subsection (f) shall only be offered by a physician who meets the qualifications established in § 63-6-241(a)(1) or (a)(3) or § 63-9-119(a)(1) or (a)(3). For purposes of this subsection (f), "direct supervision" is defined as being physically present in the same building as the advanced practice nurse at the time the invasive procedure is performed. This subsection (f) shall not apply to an advanced practice nurse performing major joint injections except sacroiliac injections, or to performing soft tissue injections or epidurals for surgical anesthesia or labor analgesia in unlicensed settings.

### **63-8-126. Drug prescriptions.**

(a) Any handwritten prescription order for a drug prepared by an optometrist who is authorized by law to prescribe a drug must be legible so that it is comprehensible by the pharmacist who fills the prescription. The handwritten prescription order must contain the name of the prescribing optometrist, the name and strength of the drug prescribed, the quantity of the drug prescribed, handwritten in letters or in numerals, instructions for the proper use of the drug, and the month and day that the prescription order was issued, recorded in letters or in numerals or a combination thereof. The prescribing optometrist must sign the handwritten prescription order on the day it is issued, unless it is a standing order issued in a hospital, a nursing home or an assisted care living facility as defined in § 68-11-201.

(b) Any typed or computer-generated prescription order for a drug issued by an optometrist who is authorized by law to prescribe a drug must be legible so that it is comprehensible by the pharmacist who fills the prescription order. The typed or computer-generated prescription order must contain the name of the prescribing optometrist, the name and strength of the drug prescribed, the quantity of the drug prescribed, recorded in letters or in numerals, instructions for the proper use of the drug, and the month and day that the typed or computer-generated prescription order was issued, recorded in letters or in numerals or a combination thereof. The prescribing optometrist must sign the typed or computer-generated prescription order on the day it is issued, unless it is a standing order issued in a hospital, nursing home or an assisted care living facility as defined in § 68-11-201.

(c) Nothing in this section shall be construed to prevent an optometrist from

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issuing a verbal prescription order.

(d)(1) All handwritten, typed or computer-generated prescription orders must be issued on either tamper-resistant prescription paper or printed utilizing a technology that results in a tamper-resistant prescription that meets the current centers for medicare and medicaid service guidance to state medicaid directors regarding § 7002(b) of the United States Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, P.L. 110-28, and meets or exceeds specific TennCare requirements for tamper-resistant prescriptions.

(2) Subdivision (d)(1) shall not apply to prescriptions written for inpatients of a hospital, outpatients of a hospital where the doctor or other person authorized to write prescriptions writes the order into the hospital medical record and then the order is given directly to the hospital pharmacy and the patient never has the opportunity to handle the written order, a nursing home or an assisted care living facility as defined in § 68-11-201 or inpatients or residents of a mental health hospital or residential facility licensed under title 33 or individuals incarcerated in a local, state or federal correctional facility.

### **63-9-116. Drug prescriptions.**

(a) Any handwritten prescription order for a drug prepared by an osteopathic physician who is authorized by law to prescribe a drug must be legible so that it is comprehensible by the pharmacist who fills the prescription. The handwritten prescription order must contain the name of the prescribing osteopathic physician, the name and strength of the drug prescribed, the quantity of the drug prescribed, handwritten in letters or in numerals, instructions for the proper use of the drug and the month and day that the prescription order was issued, recorded in letters or in numerals or a combination thereof. The prescribing osteopathic physician must sign the handwritten prescription order on the day it is issued, unless the prescription order is:

(1) Issued as a standing order in a hospital, a nursing home or an assisted care living facility as defined in § 68-11-201; or

(2) Prescribed by an osteopathic physician in the department of health or local health departments or dispensed by the department of health or a local health department as stipulated in § 63-10-205.

(b) Any typed or computer-generated prescription order for a drug issued by an osteopathic physician who is authorized by law to prescribe a drug must be legible so that it is comprehensible by the pharmacist who fills the prescription order. The typed or computer-generated prescription order must contain the name of the prescribing osteopathic physician, the name and strength of the drug prescribed, the quantity of the drug prescribed, recorded in letters or in numerals, instructions for the proper use of the drug and the month and day that the typed or computer-generated prescription order was issued, recorded in letters or in numerals or a combination thereof. The prescribing osteopathic physician must sign the typed or computer-generated prescription order on the day it is issued, unless the prescription order is:

(1) Issued as a standing order in a hospital, nursing home or an assisted care living facility as defined in § 68-11-201; or

(2) Prescribed by an osteopathic physician in the department of health or local health departments or dispensed by the department of health or a local

health department as stipulated in § 63-10-205.

(c) Nothing in this section shall be construed to prevent an osteopathic physician from issuing a verbal prescription order.

(d)(1) All handwritten, typed or computer-generated prescription orders must be issued on either tamper-resistant prescription paper or printed utilizing a technology that results in a tamper-resistant prescription that meets the current centers for medicare and medicaid service guidance to state medicaid directors regarding § 7002(b) of the United States Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, P.L. 110-28, and meets or exceeds specific TennCare requirements for tamper-resistant prescriptions.

(2) Subdivision (d)(1) shall not apply to prescriptions written for inpatients of a hospital, outpatients of a hospital where the doctor or other person authorized to write prescriptions writes the order into the hospital medical record and then the order is given directly to the hospital pharmacy and the patient never has the opportunity to handle the written order, a nursing home or an assisted care living facility as defined in § 68-11-201 or inpatients or residents of a mental health hospital or residential facility licensed under title 33 or individuals incarcerated in a local, state or federal correctional facility.

### **63-9-121. Interventional pain management.**

(a) A physician licensed in this chapter may only practice interventional pain management if the licensee is either:

(1) Board certified through the American Osteopathic Association (AOA) or the American Board of Physician Specialties (ABPS)/American Association of Physician Specialists (AAPS) in one of the following medical specialties:

- (A) Anesthesiology;
- (B) Neuromusculoskeletal medicine;
- (C) Orthopedic surgery;
- (D) Physical medicine and rehabilitation;
- (E) Radiology; or

(F) Any other board certified physician who has completed an ABMS subspecialty board in pain medicine or completed an ACGME-accredited pain fellowship;

(2) A recent graduate of a medical specialty listed in subdivision (a)(1) not yet eligible to apply for AOA or ABPS/AAPS specialty certification; provided, that there is a practice relationship with an osteopathic physician who meets the requirements of subdivision (a)(1) or a physician who meets the requirements of § 63-6-241(a)(1);

(3) A licensee who is not board certified in one of the specialties listed in subdivision (a)(1) but is board certified in a different AOA or ABPS/AAPS specialty and has completed a post-graduate training program in interventional pain management approved by the board;

(4) A licensee who serves as a clinical instructor in pain medicine at an accredited Tennessee medical training program; or

(5) A licensee who has an active pain management practice in a clinic accredited in outpatient interdisciplinary pain rehabilitation by the commission on accreditation of rehabilitation facilities or any successor

organization.

(b) For purposes of this section, interventional pain management is the practice of performing invasive procedures involving any portion of the spine, spinal cord, sympathetic nerves of the spine or block of major peripheral nerves of the spine in any setting not licensed under title 68, chapter 11.

(c) The board is authorized to define through rulemaking the scope and length of the practice relationship established in subdivision (a)(2).

(d) An osteopathic physician who provides direct supervision of an advanced practice nurse or a physician's assistant pursuant to § 63-7-126 or § 63-19-107 must meet the requirements set forth in subdivision (a)(1) or (a)(3).

(e) An osteopathic physician who violates this section is subject to disciplinary action by the board pursuant to § 63-9-111, including, but not limited to, civil penalties of up to one thousand dollars (\$1,000) for every day this section is violated.

#### **63-10-204. Definitions.**

As used in parts 2-5 of this chapter, unless the context otherwise requires:

(1) "Administer" means the direct application of a drug to a patient or research subject by injection, inhalation, ingestion, topical application or by any other means;

(2) "Board" means the Tennessee board of pharmacy;

(3) "Certification" means a voluntary process by which a practitioner's training, experience and knowledge are identified as meeting or surpassing a standard, defined or approved by the board beyond that required for licensure or registration;

(4) "Compounding" means the preparation, mixing, assembling, packaging or labeling of a drug or device:

(A) As the result of a prescription order or initiative based on the prescriber-patient-pharmacist relationship in the course of professional practice;

(B) In anticipation of prescription orders based on routine, regularly observed prescribing patterns;

(C) For the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale or dispensing;

(D) For use in a licensed prescribing practitioner's office for administration to the prescribing practitioner's patient or patients when the product is not commercially available upon receipt of an order from the prescriber;

(E) For use in a health care facility for administration to a patient or patients receiving treatment or services provided by that facility when the product is not commercially available upon receipt of an order from an authorized licensed medical practitioner of the facility;

(F) For use by emergency medical services for administration to a patient or patients receiving services from them under authorized medical control when the product is not commercially available upon receipt of an order from a licensed prescriber authorized to provide medical control; or

(G) For use by a licensed veterinarian for administration to their non-human patient or patients or for dispensing to non-human patients in the course of the practice of veterinary medicine upon receipt of an order from a veterinarian when the product is not commercially available.

(5) “Continuing education” means planned, organized learning experiences and activities beyond the basic educational or preparatory program. These learning experiences and activities are designed to promote the continuous development of skills, attitudes and knowledge necessary to maintain proficiency, provide quality service or products, be responsive to needs and keep abreast of significant change;

(6) “Continuous quality improvement program” means a system of standards and procedures to identify and evaluate quality-related events and to improve patient care;

(7) “Controlled substance” means a drug, substance or immediate precursor identified, defined or listed in title 39, chapter 17, part 4 and title 53, chapter 11;

(8) “Deliver” or “delivery” means the actual, constructive or attempted transfer from one person to another whether or not there is an agency relationship;

(9) “Device” means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a person duly authorized;

(10) “Dietary supplement” means a product, other than tobacco, intended to supplement the diet that bears or contains one (1) or more of the following ingredients: a vitamin, mineral, herb or other botanical, amino acid, dietary substance for use by humans to supplement the diet by increasing the total dietary intake, or a concentrate, metabolite, constituent, extract or combination of any of these ingredients and any other products designated as dietary supplements by federal or state law;

(11) “Director” means the director of the health related boards;

(12) “Dispense” means preparing, packaging, compounding or labeling for delivery and actual delivery of a prescription drug, nonprescription drug or device in the course of professional practice to a patient or the patient’s agent, to include a licensed health care practitioner or a health care facility providing services or treatment to the patient or patients, by or pursuant to the lawful order of a prescriber;

(13) “Distribute” means the delivery of a drug or device, other than by administering or dispensing, to persons other than the patient or the patient’s agent;

(14) “Division” means the division of health related boards;

(15) “Doctor of pharmacy” means a person duly licensed by the board to engage in the practice of pharmacy. “Doctor of pharmacy” and “pharmacist” shall be used interchangeably within parts 4-6 of this chapter and, any other provision of Tennessee Code Annotated and in any rule or regulation promulgated by the state of Tennessee and its agencies;

(16) “Drug” means any of the following:

(A) Articles recognized as drugs or drug products in any official compendium or supplement thereto;

(B) Articles, other than food, intended to affect the structure or function of the body of humans or other animals;

(C) Articles, including radioactive substances, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals; or

(D) Articles intended for use as a component of any articles specified in

this subdivision (16);

(17) "Executive director" means the executive director of the Tennessee board of pharmacy;

(18) "Label" means any written, printed or graphic matter on the immediate container of a drug or device;

(19) "Labeling" means the process of affixing all labels and other written, printed or graphic matter:

(A) Upon any article or any of its containers or wrappers; or

(B) Accompanying such article;

(20) "Licensure" means the process by which an agency of government grants permission to an individual to engage in a given occupation upon finding that the applicant has attained the minimal degree of competency necessary to ensure that the public health, safety and welfare will be reasonably protected;

(21) "Manufacturer" means any person, except a pharmacist compounding in the normal course of professional practice, engaged in the commercial production, preparation, propagation, conversion or processing of a drug, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or both, and includes any packaging or repackaging of a drug or the labeling or relabeling of its container and the promotion and marketing of such drugs or devices;

(22) "Medical order" means a lawful order of a prescriber for a specific patient that may or may not include a prescription order, such orders subject to rules and regulations as may be promulgated from time to time by the respective boards that license the persons who are authorized to prescribe drugs;

(23) "Medication therapy management program" means the distinct service or group of services that optimize therapeutic outcomes for individual patients. Medication therapy management services are independent of but can occur in conjunction with the provision of a medication product;

(24) "Nonprescription device" means a device that may be sold or dispensed without a prescription order and that is labeled and packaged in compliance with applicable state or federal law;

(25) "Nonprescription drug" means a drug that may be sold or dispensed without a prescription and that is labeled and packaged in compliance with applicable state or federal law;

(26) "Patient education" means the communication of information to the patient or caregiver by the pharmacist;

(27) "Patient profile" means a written or electronic record of individual patient information, created in a pharmacy practice, for use by a pharmacist in the provision of pharmacy patient care services, including drug use review and patient counseling requirements. The profile may include, but is not limited to, demographic information, medical history, medication and devices utilized, testing results and pharmacist comments;

(28) "Peer review committee" or "pharmacist review committee" means any committee, board, commission or other entity of any national, state or local professional association or society, including an impaired pharmacist peer review committee, a drug utilization review committee or a committee of any pharmacy benefits management organization, health care provider network, licensed health care institution or any health care organization, system or foundation, the function of which, or one of the functions of which,

is to review, evaluate and improve the quality of pharmacy-related services provided by pharmacists or pharmacy auxiliary personnel, to provide intervention, support or rehabilitative referrals or services or to determine that pharmacy-related services rendered by pharmacists or pharmacy auxiliary personnel were professionally indicated or were performed in compliance with applicable quality standards, or that the cost of pharmacy-related services rendered by pharmacists or pharmacy auxiliary personnel was reasonable;

(29) "Person" means any individual, partnership, association, corporation and the state of Tennessee, its departments, agencies and employees, and the political subdivisions of Tennessee and their departments, agencies and employees, except the department of health and local health departments;

(30) "Pharmacist" means an individual health care provider licensed by the state of Tennessee, pursuant to parts 4-6 of this chapter, to practice the profession of pharmacy;

(31) "Pharmacist-in-charge" means the supervisory pharmacist who has the authority and responsibility for compliance with laws and rules pertaining to the practice of pharmacy at the practice site of the pharmacist-in-charge;

(32) "Pharmacy" means a location licensed by this state where drugs are compounded or dispensed under the supervision of a pharmacist, as defined in the rules of the board and where prescription orders are received or processed;

(33) "Pharmacy intern" means an individual enrolled in or a graduate of a recognized school or college of pharmacy under rules established by the board who is serving a period of time of practical experience under the supervision of a pharmacist, as defined in the rules of the board;

(34) "Pharmacy technician" means an individual who is specifically trained and designated to assist pharmacists in the practice of pharmacy;

(35)(A) "Practice of pharmacy" means a patient-oriented health service profession in which pharmacists interact and consult with patients and other health care professionals to enhance patients' wellness, prevent illness and optimize outcomes. The practice involves:

(i) Interpretation, evaluation and implementation of medical orders and prescription orders;

(ii) Responsibility for compounding and dispensing prescription orders, including radioactive substances;

(iii) Participation in drug, dietary supplement and device selection, storage, distribution and administration;

(iv) Drug evaluation, utilization or regimen review;

(v) Maintenance of patient profiles and other pharmacy records;

(vi) Provision of patient education and counseling;

(vii) Drug or drug-related research; and

(viii) Those professional acts, professional decisions or professional services necessary to maintain all areas of a patient's pharmacy-related care;

(B) Nothing in this chapter authorizes a pharmacist to order laboratory tests or prescription drugs except pursuant to a medical order by the attending physician for each patient; provided, that pharmacists are authorized to conduct and assist patients with tests approved for in-home use. Except as described in this section, pharmacists shall not be autho-

rized to order or prescribe legend drugs or order laboratory tests. Pharmacists may convey orders for laboratory tests and prescription orders where required to carry out a medical order when authorized by the attending physician for each patient;

(36) "Prescriber" means an individual authorized by law to prescribe drugs;

(37) "Prescription drug" means a drug that under federal or state law is required to be dispensed only pursuant to a prescription order or is restricted to use by prescribers and that under federal law must be labeled with either the symbol "Rx only" or the statement "Caution: Federal law restricts this drug to use by, or on the order of, a licensed veterinarian";

(38) "Prescription order" means and includes any order, communicated through written, verbal or electronic means by a physician, certified physician assistant, nurse authorized pursuant to § 63-6-204, who is rendering service under the supervision, control and responsibility of a licensed physician, and who meets the requirements pursuant to § 63-7-207(14), dentist, veterinarian, optometrist authorized pursuant to § 63-8-102(12), or other allied medical practitioner, for any drug, device or treatment. Nothing in this chapter shall prohibit the verbal communication of a direct order for a prescription from a physician to a pharmacist by a registered nurse or physician assistant pursuant to § 63-6-204;

(39) "Provider" or "necessary health care provider" includes a pharmacist who provides health care services within the scope of pharmacy practice;

(40) "Quality assurance program" means a system for identifying problems in patient care that are resolved via administrative, clinical or educational actions to ensure that final products and outcomes meet applicable specifications;

(41) "Quality-related event" means the inappropriate dispensing or administration of a prescribed medication, including, but not limited to:

(A) A variation from the prescriber's medical or prescription order, including, but not limited to:

- (i) Dispensing an incorrect drug;
- (ii) Dispensing an incorrect drug strength;
- (iii) Dispensing an incorrect dosage form;
- (iv) Dispensing the drug to the wrong patient; and
- (v) Providing inadequate or incorrect packaging, labeling or directions for use; and

(B) Failure to identify, prevent, resolve and manage potential and actual drug and drug-related problems, including, but not limited to:

- (i) Over-utilization and under-utilization;
- (ii) Therapeutic duplication;
- (iii) Drug-age contraindications;
- (iv) Drug-allergy contraindications;
- (v) Drug-disease contraindications;
- (vi) Drug-gender contraindications;
- (vii) Drug-drug interactions;
- (viii) Incorrect drug dosage;
- (ix) Incorrect duration of drug therapy; and
- (x) Clinical abuse or misuse;

(42) "Unprofessional conduct" means the conduct of a pharmacist, pharmacy intern or pharmacy technician that is detrimental to patients or to the

profession of pharmacy; and

(43) “Wholesaler” means a person whose principal business is buying or otherwise acquiring drugs or devices for resale or distribution to persons other than consumers.

**63-10-216. Compounding pharmacies.**

(a) Prior to initial licensure in this state as a compounding pharmacy, a pharmacy located outside of this state must have an inspection by the regulatory or licensing agency of the state in which the pharmacy practice site is physically located. Out-of-state pharmacy practice sites must provide a copy of the most recent inspection by the regulatory or licensing agency of the state in which the pharmacy practice site is physically located, which must have been within the previous twelve (12) months. Prior to renewal of its license in this state, an out-of-state pharmacy practice site must provide the most recent inspection by the regulatory or licensing agency of the state in which the pharmacy practice site is physically located or equivalent regulatory entity, and which must have been within the previous twelve (12) months. The board of pharmacy shall have the right to require additional information before issuing or renewing a pharmacy license to insure compliance with applicable laws of this state and any rules and policies of the board.

(b) Any compounding pharmacy having an active Tennessee license shall notify the board within fourteen (14) business days of receipt of any order or decision by a regulatory agency, other than the Tennessee board of pharmacy, imposing any disciplinary action, including any warning, on the pharmacy.

(c) Any pharmacies engaged in sterile compounding must comply with relevant United States Pharmacopeia (USP) guidelines as adopted by the board by rule or policy.

(d) Any pharmacies engaging in sterile compounding, except hospital pharmacies compounding for inpatients of a hospital, shall report on a quarterly basis to the board the quantity of sterile compounded products dispensed in a defined time period in accordance with policies adopted by the board; provided, however, that the executive director of the board may request this information from a hospital pharmacy for cause and the hospital pharmacy shall be required to respond in a timely manner as defined by the executive director of the board.

**63-12-108. Compensation of members — Expenses of board.**

(a) The members of the board shall receive as compensation for their services one hundred dollars (\$100) per day for each day or portion thereof, each, while in actual service of the board, which, together with the necessary expenses of each meeting of the board, shall be paid out of any moneys in the treasury of the board upon the certificate of the president and secretary.

(b) All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

**63-12-135. Licensed veterinary technicians — Unauthorized practice.**

(a) The board shall examine and license veterinary technicians and has the same authority in the regulation, examination and qualification of licensed veterinary technicians as it has under the provisions of this chapter for the practice of veterinary medicine and veterinarians.

(b) Any licensed veterinarian may assign to a licensed veterinary technician regularly employed by the veterinarian any task or procedure to be performed for which the veterinarian exercises responsible supervision and full responsibility except those procedures requiring professional judgment or skill as prescribed by board rule.

(c) The fees provided in this chapter pertaining to applications, licensing and renewal for veterinarians also apply to licensed veterinary technicians.

(d) It is a Class B misdemeanor for any person to use in connection with the person's name any designation intending to imply that the person is a veterinary technician or a licensed veterinary technician unless the person meets the requirements contained in this chapter.

(e) The board may, on its own motion, cause to be investigated any report indicating that a licensed veterinary technician is or may be in violation of the provisions of this chapter. Any person who in good faith reports to the board any information that a licensed veterinary technician is or may be in violation of any provisions of this chapter is not subject to suit for civil damages as a result thereof.

**63-12-139. Premises permits.**

(a) Any person who owns or operates any veterinary facility, including mobile clinics, or any other premises where a licensed veterinarian practices or where the practice of veterinary medicine occurs shall apply for and secure a premises permit from the board prior to the commencement of any services that would subject the provider of those services to licensure under this chapter. Any premises in operation on January 1, 1997, shall register with the board by filling out an application as required by the board.

(b) Any premises at which veterinary services are provided and not owned or leased by a licensed veterinarian on January 1, 1997, shall be inspected prior to the opening of such premises. Upon receipt of the application and payment of the application and inspection fee established by the board, the board shall cause such premises to be inspected by an authorized agent of the board within thirty (30) days of receipt of the application. Any premises in which a licensed veterinarian operates a practice on January 1, 1997, shall be granted a temporary permit upon submission of the registration required by subsection (a), which temporary permit shall remain in effect until the premises are inspected by the board. Any premises for which a permit has been granted on or after January 1, 1997, shall be inspected by the board within sixty (60) days of any change of ownership or legal responsibility for the premises. If the board is unable to complete any inspection of the premises within the thirty- or sixty-day time periods prescribed in this subsection (b), it shall issue a temporary premises permit, which shall remain in effect until the inspection required by this section is completed.

(c) A premises permit shall be issued if the premises meet minimum standards established by board rules and regulations as to sanitary conditions and physical plant. In lieu of the above procedures, the board may issue a

premises permit upon certification by the applicant that the premises have been inspected and accredited by a recognized organization, the standards of which are found by the board to meet or exceed the minimum standards established by board rules and regulations. All veterinary facilities located in retail establishments shall have an entrance into the permitted premises that is directly on a public street or public parking area, and such entrance shall be separate from the entrance used by regular retail customers. For purposes of this chapter, "retail establishment" means any retail store in excess of two thousand five hundred (2,500) square feet that primarily sells goods not related to the practice of veterinary medicine or any veterinary facility located in an enclosed shopping mall or enclosed shopping center. The costs of any inspection undertaken by the board shall be set by the board and paid in advance by the applicant, in addition to the fee established by the board for the premises permit.

(d) Each application for a premises permit submitted by a person not licensed under this chapter shall state the name and address of the licensed veterinarian who will be responsible for the practice of veterinary medicine on the premises. The supervising veterinarian shall be licensed in Tennessee. The applicant shall also include the name or names and address or addresses of the licensee or licensees who will be on-site when the practice of veterinary medicine occurs. The applicant shall affirm that the practice of veterinary medicine shall not be provided on the premises without the physical presence of a veterinarian licensed in Tennessee. An application for a premises permit submitted pursuant to this subsection (d) may be denied if any veterinarian submitted by the applicant has been previously disciplined by the board. The holder of a premises permit shall notify the board of any change of ownership or legal responsibility for premises for which a permit has been issued, any change as to the supervising veterinarian for the premises and any change as to the licensed veterinarian or veterinarians who will be employed to provide veterinary medical services at the premises at least thirty (30) days prior to the effective date of the change unless the change arises from unforeseen circumstances, in which case notice shall be given within five (5) days of the effective date of the change.

(e) The board shall deny any application for a premises permit if the inspection reveals that the premises do not meet the minimum standards established by the board. The applicant shall pay the inspection fee for each additional reinspection required to determine whether any deficiencies found by the board have been brought into compliance with the minimum standards established by board rules and regulations as to sanitary conditions and physical plant.

(f) Any practitioner who provides veterinary services on a house-call basis and does not maintain a veterinary facility for the receipt of patients shall not be required to secure a premises permit, but must provide for appropriate equipment and facilities as established by the board.

(g) Any practitioner who provides veterinary services solely to agricultural animals and does not maintain a veterinary facility for the receipt of patients shall not be required to obtain a premises permit, but must provide for appropriate equipment and facilities as established by the board.

(h) Mobile large and small animal veterinary clinics operating in more than one (1) location and examining and/or treating animals belonging to multiple clients whose animals are not permanently housed or boarded at that location

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shall have a premises permit for the mobile facilities that are utilized unless exempted by state or local public health officials. Such mobile clinics shall also specify the locations at which such mobile clinics will operate. Such information shall be considered as part of the application for a premises permit. Any change in the locations at which the mobile clinics will operate shall be reported to the board at least thirty (30) days in advance of the effective date of the change.

(i) The following are exempt from this section:

(1) A veterinary facility owned by a person, corporation or other similar organization, public or private, for-profit or not-for-profit, to treat such employer's animals;

(2) A veterinary facility operated by an official agency of the federal or state government; and

(3) A licensed research facility.

(j) The board shall be authorized to employ such persons who may be required, in its discretion, to inspect premises under the jurisdiction of the board. The board shall establish a fee schedule for inspections required under this chapter. An applicant for a premises permit shall remit to the board an application fee, which shall be equal to the license fee required of licensed veterinarians. A licensed veterinarian or an applicant for licensure as a veterinarian shall not be required to submit an additional fee for a premises permit but shall be required to submit the required inspection fee, if such licensed veterinarian or applicant also submits an application for a premises permit.

(k) The board of veterinary examiners is authorized to issue a limited waiver to the requirement for a premises permit under this section to a veterinarian who meets the following requirements:

(1) The waiver is granted for one (1) day, once in a calendar year;

(2) The waiver is applicable to only one (1) county and only one (1) waiver shall be granted in each county in a calendar year;

(3) The waiver is only for livestock testing; and

(4) The waiver is only for one (1) location, which shall be a farm.

### **63-19-107. Restrictions on supervising physicians and assistants.**

A licensed physician supervising physician assistants shall comply with the following practices:

(1) More than one (1) physician may supervise the same physician assistant; provided, each physician assistant shall have a primary supervising physician and may have additional alternate supervising physicians who shall supervise the physician assistant in the absence or unavailability of the primary supervising physician. Each physician assistant shall notify the committee of the name, address and license number of the physician assistants' primary supervising physician and shall notify the committee of any change in such primary supervising physician within fifteen (15) days of the change. The number of physician assistants for whom a physician may serve as the supervising physician shall be determined by the physician at the practice level, consistent with good medical practice. The supervising physician shall designate one (1) or more alternate physicians who have agreed to accept the responsibility of supervising the physician assistant on a prearranged basis in the supervising physician's absence;

(2)(A) In accordance with rules adopted by the board and the committee, a supervising physician may delegate to a physician assistant working under the physician's supervision the authority to prescribe and/or issue legend drugs and controlled substances listed in Schedules II, III, IV, and V of title 39, chapter 17, part 4. The rules adopted prior to March 19, 1999, by the board and the committee governing the prescribing of legend drugs by physician assistants shall remain effective after March 19, 1999, and may be revised from time to time as deemed appropriate by the board and the committee. The board and the committee may adopt additional rules governing the prescribing of controlled substances by physician assistants. A physician assistant to whom is delegated the authority to prescribe and/or issue controlled substances must register and comply with all applicable requirements of the drug enforcement administration;

(B)(i) A physician assistant to whom the authority to prescribe legend drugs and controlled substances has been delegated by the supervising physician shall file a notice with the committee containing the name of the physician assistant, the name of the licensed physician having supervision, control and responsibility for prescriptive services rendered by the physician assistant and a copy of the formulary describing the categories of legend drugs and controlled substances to be prescribed and/or issued, by the physician assistant. The physician assistant shall be responsible for updating this information;

(ii) Notwithstanding any other rule or law, a physician assistant shall not prescribe Schedules II, III and IV controlled substances unless such prescription is specifically authorized by the formulary or expressly approved after consultation with the supervising physician before the initial issuance of the prescription or dispensing of the medication;

(iii) Any physician assistant to whom the authority to prescribe controlled drugs has been delegated by the supervising physician may only prescribe or issue a Schedule II or III opioid listed on the formulary for a maximum of a non-refillable, thirty-day course of treatment, unless specifically approved after consultation with the supervising physician before the initial issuance of the prescription or dispensing of the medication. This subdivision (2)(B)(iii) shall not apply to prescriptions issued in a hospital, a nursing home licensed under title 68, or inpatient facilities licensed under title 33;

(C) The prescriptive practices of physician assistants and the supervision by physicians under whom such physician assistants are rendering service shall be monitored by the board and committee. As used in this section, "monitor" does not include the regulation of the practice of medicine or the regulation of the practice of a physician assistant, but may include site visits by members of the board and committee;

(D) Any complaints against physician assistants and/or supervising physicians shall be reported to the director of the division of health related boards, the committee on physician assistants and the board of medical examiners, as appropriate;

(E)(i) Every prescription order issued by a physician assistant pursuant to this section shall be entered in the medical records of the patient and shall be written on a preprinted prescription pad bearing the name, address and telephone number of the supervising physician and of the physician assistant, and the physician assistant shall sign each pre-

scription order so written. Where the preprinted prescription pad contains the names of more than one (1) physician, the physician assistant shall indicate on the prescription which of those physicians is the physician assistant's primary supervising physician by placing a checkmark beside or a circle around the name of that physician;

(ii) Any handwritten prescription order for a drug prepared by a physician assistant who is authorized by law to prescribe a drug must be legible so that it is comprehensible by the pharmacist who fills the prescription. The handwritten prescription order must contain the name of the prescribing physician assistant, the name and strength of the drug prescribed, the quantity of the drug prescribed, handwritten in letters or in numerals, instructions for the proper use of the drug and the month and day that the prescription order was issued, recorded in letters or in numerals or a combination thereof. The prescribing physician assistant must sign the handwritten prescription order on the day it is issued, unless it is a standing order issued in a hospital, a nursing home or an assisted care living facility as defined in § 68-11-201;

(iii) Any typed or computer-generated prescription order for a drug issued by a physician assistant who is authorized by law to prescribe a drug must be legible so that it is comprehensible by the pharmacist who fills the prescription order. The typed or computer-generated prescription order must contain the name of the prescribing physician assistant, the name and strength of the drug prescribed, the quantity of the drug prescribed, recorded in letters or in numerals, instructions for the proper use of the drug and the month and day that the typed or computer-generated prescription order was issued, recorded in letters or in numerals or a combination thereof. The prescribing physician assistant must sign the typed or computer-generated prescription order on the day it is issued, unless it is a standing order issued in a hospital, nursing home or an assisted care living facility as defined in § 68-11-201;

(iv) Nothing in this section shall be construed to prevent a physician assistant from issuing a verbal prescription order;

(v)(a) All handwritten, typed or computer-generated prescription orders must be issued on either tamper-resistant prescription paper or printed utilizing a technology that results in a tamper-resistant prescription that meets the current centers for medicare and medicaid service guidance to state medicaid directors regarding § 7002(b) of the United States Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, P.L. 110-28, and meets or exceeds specific TennCare requirements for tamper-resistant prescriptions.

(b) Subdivision (2)(E)(v)(a) shall not apply to prescriptions written for inpatients of a hospital, outpatients of a hospital where the doctor or other person authorized to write prescriptions writes the order into the hospital medical record and then the order is given directly to the hospital pharmacy and the patient never has the opportunity to handle the written order, a nursing home or an assisted care living facility as defined in § 68-11-201 or inpatients or residents of a mental health hospital or residential facility licensed under title 33 or individuals incarcerated in a local, state or federal correctional

facility;

(F) No drugs shall be dispensed by a physician assistant except under the supervision, control and responsibility of the supervising physician;

(G) Any written, printed or computer-generated prescription order for a Schedule II controlled substance prepared by a physician assistant who is authorized by law to prescribe a drug must be legibly printed or typed as a separate prescription. The written, printed or computer-generated prescription order must contain all information otherwise required by law. The prescribing physician assistant must sign the written, printed or computer-generated prescription order on the day it is issued;

(3) The patient of any physician receiving services from that physician assistant shall be fully informed that the individual is a physician assistant and/or a sign shall be conspicuously placed within the office of the physician indicating that certain services may be rendered by a physician assistant;

(4) A physician who does not normally provide patient care is not authorized to supervise or utilize the services of a physician assistant; and

(5)(A) A physician assistant shall only perform invasive procedures involving any portion of the spine, spinal cord, sympathetic nerves of the spine or block of major peripheral nerves of the spine in any setting not licensed under title 68, chapter 11 under the direct supervision of a Tennessee physician licensed pursuant to chapter 6 or 9 of this title who is actively practicing spinal injections and has current privileges to do so at a facility licensed pursuant to title 68, chapter 11. The direct supervision provided by a physician in this subdivision (5)(A) shall only be offered by a physician who meets the qualifications established in § 63-6-241(a)(1) or (a)(3) or § 63-9-119(a)(1) or (a)(3).

(B) For purposes of this subdivision (5), "direct supervision" is defined as being physically present in the same building as the physician assistant at the time the invasive procedure is performed.

(C) This subdivision (5) shall not apply to a physician assistant performing major joint injections except sacroiliac injections, or to performing soft tissue injections or epidurals for surgical anesthesia or labor analgesia in unlicensed settings.

#### **63-24-111. Powers and duties of board — Budget.**

(a) The board has the power and duty to:

(1) Promulgate all rules that are reasonably necessary for the performance of its duties, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(2) License athletic trainers in compliance with the provisions of this chapter;

(3) Prescribe application forms for licensure and conduct, or select a licensure examination and establish the prerequisites, if any, for admission to the examination. The board is authorized to enter into a contract or agreement with an examination service and/or select an intermediary between the board and the examination service to process applicants for the examination;

(4) Establish fees, in addition to those enumerated in § 63-24-106, that are necessary for the operation of the board, in accordance with § 4-3-1011 [transferred to § 9-4-5117];

(5) Establish guidelines and standards for athletic trainers in the state that are not inconsistent with the other provisions of this chapter, and the grounds upon which disciplinary action may be taken, in addition to those causes enumerated in § 63-24-107;

(6) Establish all requirements for mandatory continuing education as a condition of continued licensure, including a mechanism for waiver of the requirements in cases of undue hardship; and

(7) Issue advisory private letter rulings to any affected licensed practitioner or license holder who makes a request regarding any matters within the board's primary jurisdiction. The private letter ruling shall only affect the person making the inquiry, and shall have no precedential value for any other inquiry or future contested case that might come before the board. Any dispute regarding a private letter ruling may be resolved pursuant to the declaratory order provisions of § 4-5-223, if the board chooses to do so.

(b) The board shall pay all money received by it into the state treasury and the commissioner of finance and administration shall make such allotments out of the general fund that the commissioner may deem proper for the necessary and proper expenses of the board. No expenditure shall be made by the board, unless and until the allotment has been made by the commissioner. The allotment shall be disbursed under the general budgetary laws of the state of Tennessee.

**63-31-107. Classes exempt from licensing requirement — Temporary permit.**

(a) The following persons may provide sleep-related services without being licensed as a polysomnographic technologist under this chapter:

(1) A polysomnographic technician may provide sleep-related services under the general supervision of a licensed physician for a period of up to one (1) year from the date of the person's graduation from one (1) of the accredited programs described in § 63-31-106(b)(1), and the board may in its sole discretion grant a one-time extension of up to three (3) months beyond this one-year period;

(2) A polysomnographic trainee may provide sleep-related services under the direct supervision of a polysomnographic technologist as a part of the person's educational program while actively enrolled in an accredited sleep technologist educational program (A-STEP) that is accredited by the American Academy of Sleep Medicine;

(3) A polysomnographic student may provide sleep-related services under the direct supervision of a polysomnographic technologist as a part of the person's educational program while actively enrolled in a polysomnographic educational program that is accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP);

(4) A person who is credentialed in one (1) of the health-related fields accepted by the board of registered polysomnographic technologists may provide sleep-related services under the direct supervision of a polysomnographic technologist, for a period of up to one (1) year, while obtaining the clinical experience necessary to be eligible to sit for the examination given by the board of registered polysomnographic technologists; and

(5) Respiratory therapists who provide polysomnography services shall be credentialed as a registered polysomnographic technologist by the board of

polysomnographic technologists, or as a sleep disorders specialist by the national board for respiratory care, or have undergone a standardized, uniform mechanism to document competency in polysomnography as approved by the Tennessee board of respiratory care with documentation of passage of this mechanism made available at the request of the board of respiratory care. The Tennessee board of respiratory care shall consult with the Tennessee board of medical examiners in the development of this mechanism. The consultation with the board of medical examiners shall be documented and the documentation, including any comments by the board of medical examiners regarding the mechanism developed by the board of respiratory care, shall be filed with the chairs of the health committee of the house of representatives and the health and welfare committee of the senate. Respiratory therapists are not required to have a second license as a polysomnographic technologist.

(b) Before providing any sleep-related services, a polysomnographic technician shall obtain a temporary permit from the board. While providing sleep-related services, the technician shall wear a badge that appropriately identifies the person as a polysomnographic technician.

(c) Before providing any sleep-related services, a polysomnographic trainee shall give notice to the board that the trainee is enrolled in an A-STEP educational program accredited by the American Academy of Sleep Medicine. Trainees shall wear a badge that appropriately identifies the trainee as a polysomnographic trainee while providing such services.

(d) Before providing any sleep-related services, a person who is obtaining clinical experience pursuant to subdivision (a)(4) shall give notice to the board that the person is working under the direct supervision of a polysomnographic technologist in order to gain the experience to be eligible to sit for the examination given by the board of registered polysomnographic technologists. The person shall wear a badge that appropriately identifies the person while providing such services.

(e) Polysomnographic students shall not receive compensation for the sleep-related services they provide and shall wear badges that appropriately identify them as students.

#### **63-51-108. Assessment of costs.**

The department of health shall assess boards of providers that they regulate for the costs reasonably associated with providing the services and information pursuant to this chapter. Further, the department shall provide the cost to the department of commerce and insurance that is associated with providing the services and information relative to the board of pharmacy and managed care organizations. The department of commerce and insurance shall assess the cost to the providers that the department regulates. These costs shall be assessed in compliance with § 4-3-1011 [transferred to § 9-4-5117] and § 56-1-310.

#### **64-1-101. Legislative findings — Authority creation — Board of directors — Chair — Meetings — Employees.**

(a)(1) The general assembly finds and declares that:

(A) The tributaries and subtributaries of the major waterways of Tennessee are among the basic resources of the state;

(B) Determination and effectuation of the best means for control of the flood waters of those tributaries and subtributaries, development of their full potential as a domestic, municipal, industrial and agricultural water source and use of their waters and shoreline lands for recreation and industrial development are public purposes essential to the integrated economic development of the areas drained by these streams and to the future economic welfare of the entire state;

(C) Development of the watershed of the Beech River by a local development authority will provide information on problems of water control and development valuable in the formulation of state policy with respect to similar action on larger streams; and

(D) Creation of a local development authority is essential to the achievement of these objectives in the watershed of the Beech River in Decatur and Henderson counties.

(2) There is, therefore, hereby created the Beech River watershed development authority, referred to as authority in this part, to exercise the powers granted in this part, in and with respect to the portions of the counties of Decatur and Henderson making up the watershed of the Beech River.

(b) The authority shall be a body politic and corporate and shall be governed by a board of directors consisting of:

(1) The commissioner of environment and conservation, the county mayor of Decatur County, and the county mayor of Henderson County as ex officio members; and

(2) Five (5) additional members to be appointed by the governor from persons residing in Decatur or Henderson County and to include persons active in municipal, industrial, agricultural and commercial groups concerned with the development of the Beech River watershed. One (1) such member shall be appointed for a three-year term, two (2) for six-year terms and two (2) for nine-year terms, but such terms shall continue in all events until successors are appointed. Their successors shall be appointed by the governor for terms of nine (9) years. Two (2) members shall be appointed from persons residing in Decatur County and three (3) from persons residing in Henderson County. In the event of a vacancy on the board, the governor shall appoint a successor for the unexpired term.

(c) The board of directors of the authority shall elect a chair from the voting members of the board for a term of three (3) years or for so long as such person remains a member of the board, whichever is less.

(d) The commissioner shall serve on the board in an advisory capacity without vote. The other members shall each have one (1) vote. The directors shall serve without pay except for actual traveling expenses and other necessary expenses incurred in the performance of their official duties, such expenses to be reimbursed from such funds as may be available to the authority.

(e)(1) Upon completion of the membership of the board, the members shall meet and organize at Lexington, set a regular time and place for the meetings of the authority and obtain offices and all necessary equipment for the office.

(2) The board may employ an executive secretary and such other persons as it deems necessary to carry out the purposes stated in this part and the salary of any such employees may be paid out of such funds as may be available to the authority from any source. The executive secretary shall be

the custodian of funds belonging to the authority and shall keep such records and accounts as may be required by the board. The executive secretary shall also execute a corporate surety bond as prescribed by the board.

**64-1-102. Powers and duties — Eminent domain — Tax-exempt status.**

(a) The authority is hereby specifically authorized and empowered to do any and all things necessary or desirable in forming and executing a plan for the comprehensive development of the resources of the Beech River watershed, including, but not limited to, action in cooperation, when necessary or desirable, with appropriate local, state and federal agencies, in the fields of agriculture, forestry, drainage and flood control, land reclamation, electric power utilization, irrigation, water conservation and supply, recreation, public health, education, manufacturing and trade. To that end the authority:

- (1) Shall have succession in its corporate name;
- (2) May sue and be sued in its corporate name;
- (3) May adopt and use a corporate seal;
- (4) May establish, amend and repeal bylaws and make all rules and regulations deemed expedient for the management of its corporate affairs;
- (5) May make contracts and execute instruments containing such terms, provisions and conditions as in the judgment of the board of directors may be necessary, proper or advisable in the exercise of the powers conferred upon it in this part, including, but not limited to, contracts for grants, loans or other assistance from any federal agency and contracts with corporations, associations or individuals for construction work in the furtherance of any development project and may carry out and perform the terms and conditions of all such contracts or instruments;
- (6) May acquire by purchase, lease, gift or by condemnation property of any kind, real, personal or mixed, or any interest therein, that the board deems necessary to the exercise of its powers or functions. Acquisition by condemnation is limited to land, rights in land, including leaseholds and easements, and water rights in the Beech River watershed that, if taken for channel improvement along an unimpounded portion of the Beech River stream system, lie within the present floodplain of the main stream or of a tributary of the Beech River and, if bordering an impoundment or detention reservoir, lie within two thousand six hundred fifty feet (2,650') of the nearest point on the maximum shoreline contour of such impoundment. The amount and character of interests in land, rights in land and water rights to be acquired within either of these boundaries shall be determined by the board of directors, which determination shall be final;
- (7) May issue its bonds from time to time in a total amount not to exceed one million dollars (\$1,000,000) for the purpose of paying in whole or in part the cost of the acquisition of necessary land or interests therein and the development of the resources of the Beech River watershed and expenses incidental thereto; may secure such bonds by a pledge of all or any part of the revenues that may now or hereafter come to the authority from any source, by a mortgage or deed of trust of the authority's land or any part thereof, or by a combination of the two (2); and may make such contracts or covenants in the issuance of such bonds as may be necessary to ensure the marketability thereof;

(8) May arrange with any city, county, municipality or supplier of utilities for the abandonment, relocation or other adjustment of roads, highways,

bridges and utility lines;

(9) May enter into contracts with municipalities, corporations, other public agencies or political subdivisions of any kind or with others for the sale of water from reservoirs in the Beech River system under its control for municipal, domestic, agricultural or industrial use or any other services, facilities or commodities that the authority may be in a position to supply;

(10) May develop or provide for the development of residential and commercial property existing within the Beech River system, and may develop reservoirs and shoreline lands for recreational use and provide for their operation or use for this purpose directly or by concessionaires, lessees, or vendees of shoreline lands;

(11) May sell or lease shoreline lands acquired in connection with development of the Beech River system for uses consistent with the authority's development plans and subject to such restrictions as the authority deems necessary for reservoir protection and to such requirements as to:

(A) Character of improvements and activities on the lands; and

(B) Time within which such improvements or activities shall be undertaken as the authority deems appropriate to its overall development plans; and

(12) May manage or operate reservoirs or shoreline lands of reservoirs owned by the United States under appropriate agreements with the federal agency or agencies having custody and control thereof.

(b)(1) The authority's power of eminent domain may be exercised under title 29, chapter 16, or pursuant to any other applicable statutory provisions, now in force or hereafter enacted, for the exercise of the power of eminent domain.

(2)(A) At any time on or after the filing of a petition for condemnation of property and before the entry of final judgment, the authority may file with the clerk of the court in which the petition is filed a declaration of taking signed by the duly authorized officer or agent of the authority declaring that all or part of the property described in the petition is being taken for the use of the authority. The declaration of taking is sufficient if it sets forth:

(i) A description of the property, sufficient for the identification thereof, to which there may be attached a plat or map thereof;

(ii) A statement of the estate or interest in the property being taken; and

(iii) A statement of the sum of money estimated by the authority to be just compensation for the property taken.

(B) At any time prior to the vesting of title to property in the authority, the authority may withdraw or dismiss its petition with respect to any and all of the property described in the petition.

(3) From the filing of the declaration of taking and the deposit in court to the use of the persons entitled thereto of the amount of the estimated compensation stated in the declaration, title to the property described as being taken by the declaration shall vest in the authority, free from the right, title, interest or lien of all parties to the cause; and the property shall be deemed to be condemned and taken for the use of the authority, and the right to just compensation for the same shall vest in the persons entitled thereto. Upon the filing of the declaration of taking, the court shall designate a day, not exceeding twenty (20) days after such filing, except upon good cause shown, on which the persons in possession are required to surrender

possession to the authority.

(4) The ultimate amount of compensation shall be determined pursuant to title 29, chapter 16. If the amount so fixed exceeds the amount so deposited in the court by the authority or otherwise paid to the persons entitled thereto, the court shall enter judgment against the authority in the amount of such deficiency, together with interest at the legal rate on such deficiency from the date of the vesting of title to the date of entry of the final judgment, subject, however, to abatement for use, income, rents or profits derived from such property by the owner thereof subsequent to the vesting of title in the authority; and the court shall order the authority to deposit the amount of such deficiency in court. Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of just compensation to be awarded in the proceedings. Interest is not allowed on so much of the just compensation as has been paid into court with the declaration of taking. In case the amount deposited in court by the authority as the estimated compensation for the property exceeds the amount of the final award or judgment, such excess shall be returned to the authority.

(5) As an alternative to the procedure provided in subdivisions (b)(2)-(4), the authority may file in the court where condemnation proceedings of the authority are pending an application for a writ of possession, which the court shall, upon the authority's posting a bond with the clerk of the court in such amount as the court may deem commensurate with the value of the property condemned, order that a writ of possession shall issue immediately or as soon and upon such terms as the court, in its discretion, may deem proper and just.

(c) During the time that title to land or rights in land are held by the authority, they are exempt from all taxes levied by the state or any of its political subdivisions, or instrumentalities of either, and all other property and activities of the authority are similarly exempt.

**64-5-213. Statement of objectives — Annual report — Accounting system — Audits — Purchasing and contracting procedures.**

(a) The board, after receiving recommendations from its advisory committee, shall annually formulate and issue a statement of objectives, priorities and programs that it has adopted or envisions to meet these objectives. This statement of objectives shall be included in the annual report.

(b) The board shall report annually to the governor, the commissioner of economic and community development, the state funding board and to the general assembly through the office of legislative budget analysis and the chairs of the following standing committees or such other committees as the speaker of each respective house may direct: senate finance, ways and means, senate government operations, senate state and local government, house finance, ways and means, house government operations, and state government of the house of representatives. This report shall also be transmitted to the governing bodies of the various counties and incorporated municipalities of the region. Such reports shall include a statement of financial receipts and expenditures, assets and liabilities of the authority and a summary of all activities and accomplishments for the period and proposed plans for the next

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year.

(c) The comptroller of the treasury is directed to develop a uniform accounting system conforming to generally accepted accounting principles for the authority.

(d) The annual reports and all books of accounts and financial records of all funds received are subject to audit annually by the comptroller of the treasury. The audit may be performed by a licensed independent public accountant selected by the board and approved by the comptroller of the treasury. The cost of any audit shall be paid by the authority.

(1) The comptroller of the treasury shall ensure that audits are prepared in accordance with generally accepted governmental auditing standards and determine if the audits meet minimum audit standards prescribed by the comptroller of the treasury. No audit may be accepted as meeting the requirements of this section until approved by the comptroller of the treasury.

(2) All audits shall be completed as soon as practicable after the end of the fiscal year of the authority. One (1) copy of each audit shall be furnished to each member of the board and the comptroller of the treasury. Copies of each audit shall also be made available to the press.

(e) The board shall develop purchasing and contracting procedures, which shall be approved by the comptroller of the treasury prior to implementation.

#### **64-6-105. Board of directors.**

(a)(1) The authority shall be governed by a board of directors in which all powers of the corporation shall be vested. The membership of the board shall include the following:

(A) For each county that chooses to be a participating municipality in accordance with § 64-6-104(a), the county mayor or a designee of the county mayor of that county;

(B) The mayor or the designee of the mayor in an incorporated municipality that chooses to be a participating municipality in accordance with § 64-6-104(a);

(C) The two (2) speakers of the respective houses acting jointly after consultation with the members whose districts lie within the participating counties shall appoint one (1) member;

(D) The governor, after consultation with the mayors of the participating municipalities, shall appoint one (1) member; and

(E) The chancellor of the board of regents shall appoint one (1) member from the presidents of the community colleges that have a campus within the participating counties.

(2) For the purposes of calculating terms, members serving on a board as of January 1, 2013, shall serve until December 31, 2014. At the conclusion of such terms:

(A) Each regular term of the board member appointed jointly by the speakers beginning January 1, 2015, shall be two (2) years, to be coterminous with the terms of office of the speakers;

(B) Each regular term of the board member appointed by the governor beginning January 1, 2015, shall be four (4) years, to be coterminous with the term of office of the governor; and

(C) Each regular term of all other board members appointed in accordance with this subsection (a) beginning January 1, 2015, shall be for

three (3) years.

(3) Board members shall serve until their successors are appointed. If a vacancy occurs on the board, the remainder of the term shall be filled by the respective appointing authorities in accordance with this subsection (a).

(4) Any board created pursuant to this subsection (a) shall cease to exist upon the completion of the sale of a megasite governed by such board.

(b) The directors shall serve without compensation, except that they shall be reimbursed for their actual expenses incurred in and about the performance of their duties, unless otherwise authorized by local ordinance or resolution.

(c)(1) The board shall elect such officers and adopt such bylaws as deemed appropriate.

(2) The board may elect an executive committee from among its members, which may act on behalf of the board between regular board meetings.

(d) A director who can designate a representative shall make the designation in writing, addressed to the chair of the authority specifying the meeting for which the designation is effective, to be filed in advance of the meeting.

#### **64-6-110. Alternative method of establishing and governing an authority.**

(a) This section creates an alternative method of establishing and governing an authority instead of §§ 64-6-104 and 64-6-105(a).

(b)(1) If the commissioner of economic and community development finds and determines that it is wise, expedient, necessary or advisable that the authority be formed and approves the form of certificate of incorporation proposed to be used in organizing the authority, then the commissioner shall act as incorporator or designate a person as incorporator to execute, acknowledge and file a certificate of incorporation for the authority, which certificate shall set forth:

- (A) The name of the authority;
- (B) The number of voting directors;
- (C) The name and residence of the incorporator;
- (D) The location of the principal office of the corporation;
- (E) The purpose for which the authority is created;
- (F) The period, if any, for the duration of the authority; and
- (G) Any other matter deemed appropriate and consistent with this chapter and the laws of this state.

(2) When executed and acknowledged by the incorporator, the certificate shall be filed with the secretary of state and may be subsequently amended or the authority dissolved, all consistent with title 7, chapter 53. Within thirty (30) days of filing the certificate with the secretary of state, the incorporator shall adopt temporary bylaws.

(c)(1) The authority formed pursuant to this section shall be governed by a board of directors in which all powers of the corporation shall be vested. The membership of the board shall include the following:

(A) The county mayor or a designee of the county mayor of the county in which the megasite is located or, if it is located in more than one (1) county, the county in which the megasite is predominately located;

(B) The mayor or the designee of the mayor in the incorporated municipality with the largest population in a county in which the megasite is located or, if it is located in more than one (1) county, the county in which

the megasite is predominately located;

(C) The two (2) speakers of the respective houses acting jointly after consultation with the members whose districts lie within the participating counties shall appoint two (2) members;

(D) The governor shall appoint two (2) at-large members and three (3) additional members representing and residing in counties contiguous to the county in which the megasite is located. At the time of initial appointment, the three (3) additional members shall be selected from counties not otherwise represented on the board. Notwithstanding any provision of this part to the contrary, the three (3) additional members shall serve without reimbursement for their actual travel expenses;

(E) The chancellor of the board of regents shall appoint one (1) member from the presidents of the community colleges that have a campus within a county in which the megasite is wholly or partially located or within a county contiguous thereto; and

(F) The executive director of the development district in which the megasite is located.

(2) For the purposes of calculating terms, members serving on a board as of January 1, 2013, shall serve until December 31, 2014, at which time their terms shall expire. At the conclusion of such terms:

(A) Each regular term of the board members appointed jointly by the speakers beginning January 1, 2015, shall be two (2) years, to be coterminous with the terms of office of the speakers;

(B) Each regular term of the board members appointed by the governor beginning January 1, 2015, shall be four (4) years, to be coterminous with the term of office of the governor; and

(C) Each regular term of all other board members appointed in accordance with this subsection (c) beginning January 1, 2015, shall be for three (3) years.

(3) Board members shall serve until their successors are appointed. If a vacancy occurs on the board, the remainder of the term shall be filled by the respective appointing authorities in accordance with this subsection (c).

(4) Any board created pursuant to this subsection (c) shall cease to exist upon the completion of the sale of a megasite governed by such board.

(d) For purposes of authorities established and governed under this section, "participating municipality" means each incorporated municipality or county in which the megasite is wholly or partially located.

#### **64-10-201. Creation.**

(a) The Cumberland regional business and agribusiness marketing authority is hereby created as a public body corporate and politic, referred to as the authority in this part. The authority is a public and governmental body acting as an agent and instrumentality of the counties with respect to which the authority is organized. As such, all property of the authority, both real and personal, is exempt from all local, state and federal taxation.

(b) The acquisition, operating and financing of the authority and related purposes are hereby declared to be for public and governmental purposes and a matter of public necessity to further the economy and growth of the business and agricultural industry of the region.

(c) The purposes of the Cumberland regional business and agribusiness

marketing authority are to:

- (1) Create a business support process that accelerates the successful development of start-up and fledgling companies by providing entrepreneurs with an array of targeted resources and services;
- (2) Have the authority to establish and operate a market for agricultural products of the region through a food distribution center, to provide farmers of the region with a ready market for agricultural products, and to provide the citizens of the region and other buyers a convenient place to purchase these products; and
- (3) Further the economy and growth of the region served by the authority by planning, acquiring, constructing, improving, extending, furnishing, equipping, financing, owning, operating and maintaining support for small business incubators for the region.

#### **64-10-202. Part definitions.**

As used in this part, unless the context otherwise requires:

- (1) "Agribusiness" means a business dealing with agricultural products or engaged in providing products or services to farmers;
- (2) "Authority" means the Cumberland regional business and agribusiness marketing authority;
- (3) "Board" means the board of directors of the Cumberland regional business and agribusiness marketing authority;
- (4) "Business" means any start-up or existing business;
- (5) "Center" means the regional food distribution center established by the authority;
- (6) "Department" means the department of agriculture; and
- (7) "Region" means the area consisting of the counties of Anderson, Campbell, Cumberland, Fentress, Loudon, Morgan, Roane, Scott and any other county in the eastern grand division that becomes a member of the authority in accordance with the provisions of § 64-10-215.

#### **64-10-203. Board of directors.**

- (a)(1) Subject to subsection (b), the authority shall be governed by a board of directors consisting of the county mayor of each county, or the county mayor's designee, that is a member of the authority. Subject to § 64-10-215, the following counties shall comprise the authority: Anderson; Campbell; Cumberland; Fentress; Loudon; Morgan; Roane; and Scott.
- (2) The term of any designee shall expire with the term of the county mayor who appointed such designee. The initial terms of designees, if any, shall be as follows:
  - (A) The initial terms of the designees from Anderson and Cumberland counties shall be one (1) year;
  - (B) The initial terms of the designees from Loudon, Morgan and Fentress counties shall be two (2) years; and
  - (C) The initial terms of the designees from Campbell, Roane and Scott counties shall be three (3) years.
- (3) Following the initial terms of service, the term of office for each designee shall be three (3) years.
- (4) The board shall also have two (2) nonvoting members as follows:
  - (A) The president of Roane State Community College, or the president's

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designee; and

(B) One (1) member elected by the board.

(5) The board shall, at its first meeting of each calendar year, elect from its voting membership a chair, a vice chair, a secretary and a treasurer, each to serve terms of one (1) year and until a successor is elected.

(6) The term of office of the county mayor serving on the board shall be coterminous with such official's elective term of office.

(b) Should a board member who is a designee attend less than fifty percent (50%) of the called meetings during a calendar year, the board is authorized to declare a vacancy on the board for that position. The board shall then notify the county mayor who appointed such designee of the vacancy and, if the county mayor fails to appoint a new designee within thirty (30) days, then the board shall, by majority vote, replace the member with a knowledgeable person from the county for which a vacancy was declared by the board.

(c) The board shall meet at least quarterly. More frequent meetings may be called at the discretion of the board.

#### **64-10-204. Executive committee.**

The board shall establish an executive committee consisting of the chair, vice chair, secretary, treasurer and the president of Roane State Community College or the president's designee, as an ex officio member. The executive committee is authorized to act on behalf of the board in the day-to-day operations of the authority. The executive committee shall meet at least monthly, either in person or by telephone conference, and make a full report to the board at its regular meetings.

#### **64-10-205. Advisory committee.**

(a) The board may appoint an advisory committee consisting of one (1) member from each county that is a member of the authority.

(b) If appointed by the board, it shall be the duty of the advisory committee to consult with and advise the board regarding the operation and financial management of the authority.

#### **64-10-206. Powers and duties.**

(a) The authority has the following powers:

(1) Perpetual succession in corporate name;

(2) Sue and be sued in its name;

(3) Adopt, use and alter a corporate seal, which shall be judicially noticed;

(4) Enter into such contracts and cooperative agreements with federal, state and local governments, with agencies of such governments, with private individuals, corporations, associations and other organizations as the board may deem necessary or convenient to enable it to carry out the purposes of this part;

(5) Adopt, amend and repeal bylaws;

(6) Appoint such managers, officers, employees, attorneys and agents as the board deems necessary for the transaction of its business, fix their compensation, define their duties and require bonds of such of them as the board may determine. The salaries of any such employees may be paid out of such funds as may be available to the authority; and

(7) Accept the transfer of grants, funds, assets and liabilities of the authority upon the termination of the interlocal government cooperative agreement establishing the authority, in accordance with § 64-10-217.

(b) The board shall:

(1) Approve an annual budget for the authority;

(2) Adopt a purchasing policy and a personnel policy consistent with state and federal law; and

(3) Adopt policies and procedures for fiscal control and accounting.

(c) The board may do all other things that are necessary or appropriate for carrying out this part that are not prohibited by law or this part.

**64-10-207. Issuance of bonds, notes or other obligations.**

(a)(1) The authority is authorized and empowered to issue its bonds, notes or other obligations from time to time for the purpose of paying in whole or in part the cost of acquiring necessary lands and interests therein, and of constructing and acquiring constructed facilities and improvements necessary to further the economy and growth of the agriculture industry of the region, and the expenses incidental thereto. Prior to the adoption of any resolution of the board authorizing the sale of bonds, notes or other obligations, or entering into any contract or other arrangement in the planning or preparation for the sale of bonds, notes or other obligations, the authority shall review such plans with the comptroller of the treasury or the comptroller's designee. The state funding board established by § 9-9-101 is authorized to contract or to make other arrangements as it may deem necessary to provide for the issuance of such bonds, notes or other obligations of the authority or, in the state funding board's discretion, the authority may enter into such contracts or other arrangements. Any contract or arrangement entered into for the purpose of the issuance of any bonds, notes or other obligations shall be subject to the approval of the state funding board.

(2) Any resolution of the board authorizing the sale of bonds, notes or other obligations shall be submitted to the state funding board, and such resolution shall only become effective upon receiving the approval of the state funding board. The state funding board, upon rejecting any resolution of the board authorizing the issuance of bonds, notes or other obligations, shall state in writing the reasons for its action.

(b)(1) Except as otherwise expressly provided in this subsection (b), all bonds, including notes or other obligations of the authority, issued by the authority, are payable solely out of the revenues and receipts derived from the authority's projects or of any revenues of the authority as may be designated in the proceedings of the board under which the bonds are authorized to be issued; provided, that notes issued in anticipation of the issuance of bonds may be retired out of the proceeds of such bonds. Such bonds may be executed and delivered by the authority at any time and from time to time, may be in such form and denominations and of such terms and maturities, may be in registered or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times not exceeding forty (40) years from the date thereof, may be payable at such place or places whether within or without Tennessee, may bear interest at such rate or rates payable at such time or times and at such place or

places and evidenced in such manner, may be executed by such officers of the authority and may contain such provisions not inconsistent herewith, all as shall be provided in the proceedings of the board whereunder the bonds shall be authorized to be issued.

(2) If deemed advisable by the board, there may be retained in the proceedings under which any bonds of the authority are authorized to be issued an option to redeem all or any part thereof as may be specified in such proceedings, at such price or prices and after such notice or notices and on such terms and conditions as may be set forth in such proceedings and as may be briefly recited on the face of the bonds, however nothing contained in this subsection (b) shall be construed to confer on the authority any right or option to redeem any bonds except as may be provided in the proceedings under which they shall be issued.

(3) Any bonds of the authority may be sold at public or private sale in such manner, at such price and from time to time as may be determined by the board to be most advantageous, and the authority may pay all expenses, premiums and commissions that its board may deem necessary or advantageous in connection with the issuance thereof. Issuance by the board of one (1) or more series of bonds for one (1) or more purposes shall not preclude it from issuing other bonds in connection with the same project or any other project, but the proceedings whereunder any subsequent bonds may be issued shall recognize and protect any prior pledge or mortgage made for any prior issue of bonds.

(4) Proceeds of bonds issued by the authority may be used for the purpose of constructing, acquiring, reconstructing, improving, equipping, furnishing, bettering or extending any project or projects, including the payment of interest on the bonds during construction of any such project and for two (2) years after the estimated date of completion, for payment of engineering, fiscal, architectural and legal expenses incurred in connection with such project and the issuance of the bonds, and for the establishment of a reasonable reserve fund for the payment of principal of and interest on such bonds in the event of a deficiency in the revenues and receipts available for such payment.

(c) Subject to the approvals required in subsection (a), any bonds or notes of the authority at any time outstanding may, at any time and from time to time, be refunded by the authority by the issuance of its refunding bonds in such amount as the board may deem necessary, but not exceeding the sum of the following:

- (1) The principal amount of the obligations being refinanced;
- (2) Applicable redemption premiums thereon;
- (3) Unpaid interest on such obligations to the date of delivery or exchange of the refunding bonds;
- (4) In the event the proceeds from the sale of the refunding bonds are to be deposited in trust as provided in this section, the amount of interest to accrue on such obligations from the date of delivery to the first or any subsequent available redemption date or dates selected, in its discretion, by the board or to the date or dates of maturity, whichever shall be determined by the board to be most advantageous or necessary to the authority;
- (5) A reasonable reserve for the payment of principal of and interest on such bonds or a renewal and replacement reserve;
- (6) If the project to be constructed from the proceeds of the obligations being refinanced has not been completed, an amount sufficient to meet the

interest charges on the refunding bonds during the construction of such project and for two (2) years after the estimated date of completion, but only to the extent that interest charges have not been capitalized from the proceeds of the obligations being refinanced; and

(7) Expenses, premiums and commissions of the authority, including bonds discount, deemed by the board to be necessary for the issuance of the refunding bonds. A determination by the board that any refinancing is advantageous or necessary to the authority, or that any of the amounts provided in this subdivision (c)(7) should be included in such refinancing or that any of the obligations to be refinanced should be called for redemption on the first or any subsequent available redemption date permitted to remain outstanding until their respective dates of maturity, shall be conclusive.

(d) Any such refunding may be effected whether the obligations to be refunded have then matured or thereafter mature, either by the exchange of the refunding bonds for the obligations to be refunded thereby with the consent of the holders of the obligations so to be refunded, or by sale of the refunding bonds, and the application of the proceeds thereof to the payment of the obligations to be refunded thereby, and regardless of whether or not the obligations proposed to be refunded are payable on the same date or different dates or are due serially or otherwise.

(e) Prior to the issuance of the refunding bonds, the board shall cause notice of its intention to issue the refunding bonds, identifying the obligations proposed to be refunded and setting forth the estimated date of delivery of the refunding bonds, to be given to the holders of the outstanding obligations by mail to each registered holder and, if the outstanding bonds or coupons are not registered securities, by publication of an appropriate notice one (1) time each in a newspaper having general circulation in the area of the project and in a financial newspaper published in New York, New York, having national circulation. As soon as practicable after the delivery of the refunding bonds, and whether or not any of the obligations to be refunded are to be called for redemption, the board shall cause notice of the issuance of the refunding bonds to be given in the manner provided in this subsection (e).

(f) If any of the obligations to be refunded are to be called for redemption, the board shall cause notice of redemption to be given in the manner required by the proceedings authorizing such outstanding obligations.

(g) The principal proceeds from the sale of any refunding bonds shall be applied only as follows:

(1) To the immediate payment and retirement of the obligations being refunded; or

(2) To the extent not required for the immediate payment of the obligations being refunded, then such proceeds shall be deposited in trust to provide for the payment and retirement of the obligations being refunded; but provision may be made for the pledging and disposition of any surplus, including, without limitation, provision for the pledging of any such surplus to the payment of the principal of and interest on any issue or series of refunding bonds. Money in any such trust fund may be invested in direct obligations of the United States government, or obligations the principal of and interest on which are guaranteed by the United States government, or obligations of any authority or instrumentality of the United States government or in certificates of deposit issued by a bank or trust company located

in this state, if such certificates are secured by a pledge of any of such obligations having any aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. Nothing in this subsection (g) shall be construed as a limitation on the duration of any deposit in trust for the retirement of obligations being refunded but that have not matured and that are not presently redeemable or, if presently redeemable, have not been called for redemption.

(h) All such bonds, refunding bonds and the interest coupons applicable thereto are hereby made and shall be construed to be negotiable instruments.

(i) The principal of and interest on any bonds issued by the authority may be secured by a pledge of the revenues and receipts out of which the same shall be made payable and may be secured by a mortgage or deed of trust covering all or any part of the projects from which the revenues or receipts so pledged may be derived, including any enlargements of and additions to any such projects thereafter made, or by an assignment and pledge of all or any part of the authority's interest in and rights under the leases, sale contracts or loan agreements relating to such projects, or any part thereof. The resolution under which the bonds are authorized to be issued and any such mortgage or deed of trust may contain any agreements and provisions respecting the maintenance of the projects covered thereby, the fixing and collection of rents or payments with respect to any projects or portions thereof covered by such resolution, mortgage or deed of trust, the creation and maintenance of special funds from such revenues and from the proceeds of such bonds and the rights and remedies available in the event of default, all as the board deems advisable and not in conflict with the provisions hereof. Each pledge, agreement, mortgage and deed of trust made for the benefit or security of any of the bonds of the authority shall continue to be effective until the principal of and interest on the bonds for the benefit of which the same were made have been fully paid. In the event of default in such payment or in any agreements of the authority made as a part of the contract under which the bonds were issued, whether contained in the proceedings authorizing the bonds or in any mortgage and deed of trust executed as security for the bonds, such payment or agreement may be enforced by suit, mandamus, the appointment of a receiver in equity or by foreclosure of any such mortgage and deed of trust, or any one (1) or more of the remedies listed in this part.

#### **64-10-208. Executive director and staff.**

The board is authorized to appoint an executive director and staff whose salaries shall be paid out of the revenues generated by the authority.

#### **64-10-209. Regular meetings.**

(a) The board shall establish the time, date and place for its regular meetings. The chair or a majority of the voting members of the board, by petition, may call special meetings of the board.

(b) A majority of the entire voting membership of the board and not simply a majority of those members present shall be necessary to conduct business.

(c) The members of the board, executive committee or advisory committee, if an advisory committee is appointed, shall serve without compensation, but may be allowed necessary travel and other expenses while engaged in the business of the authority. All reimbursement for travel expenses shall be in

accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

**64-10-210. Member counties—Powers.**

The counties that are members of the authority are hereby authorized and empowered to:

- (1) Appropriate sufficient funds for the use of the authority amounts of money that their respective governing bodies, acting in their sole discretion, shall approve to be paid from the general fund of the respective county. County legislative bodies are empowered to levy and collect ad valorem taxes for such purposes, which are hereby declared to be for county public purposes; and
- (2) Issue their bonds as provided in title 9, chapter 21, to obtain funds for the financing of public works by the authority pursuant to cooperative agreements with the authority.

**64-10-211. Receipt of grants, appropriations and other contributions.**

In addition to § 64-10-210, the authority may receive grants, appropriations, other contributions of funds, and real or personal property, from the state of Tennessee, the federal government, any other governmental entity or any nonprofit organization, individuals, companies, or corporations.

**64-10-212. Conduct of financial affairs.**

The financial affairs of the authority shall be conducted in accordance with state law and the procedures established by the comptroller of the treasury. The board may establish such bank accounts for the authority as the board deems appropriate and consistent with state law. The authority is authorized to invest any funds of the authority in any investment that would be an eligible investment of a county.

**64-10-213. Annual audit.**

(a) The board of directors of the authority shall cause an annual audit to be made of the books and records of the authority. Within thirty (30) days after receipt by the authority, a copy of the annual audit shall be filed with the board, and if the department of audit has not prepared the audit, with the comptroller of the treasury or comptroller's designee. The comptroller of the treasury, through the department of audit, shall be responsible for determining that such audits are prepared in accordance with generally accepted governmental auditing standards and that such audits meet the minimum standards prescribed by the comptroller of the treasury. The comptroller of the treasury shall promulgate such rules and regulations as are required to assure that the books and records are kept in accordance with generally accepted accounting principles and that audit standards prescribed by the comptroller of the treasury are met.

(b) These audits shall be prepared by either certified public accountants, public accountants, or by the department of audit. In the event the governing body of the authority shall fail or refuse to have the audit prepared, then the comptroller of the treasury may appoint a certified public accountant, or public accountant or direct the department of audit to prepare the audit, the cost of

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such audit to be paid by the authority.

(c) The comptroller of the treasury is authorized to modify the requirements for an audit as set out in this section when the activity, in the comptroller of the treasury's judgment, is not sufficient to justify the expenses of a complete audit. Furthermore, the comptroller of the treasury is authorized to direct the department of audit to make an audit or financial review of the books and records of the authority.

(d) The current operating financial statements of the authority, and any other pertinent information as required by the comptroller, or the comptroller's designee, shall be submitted annually with the copy of the annual audit, or upon request, to the comptroller, or the comptroller's designee.

#### **64-10-214. Obsolete or surplus property — Disposal.**

The board may direct the disposal of the authority's obsolete or surplus property, except for land purchased under the state's grant agreement, contract number 100/005-01-91, executed May 23, 1991, and any improvements thereon, which shall immediately be offered, at no cost, to the state. Any disposal of interest in land or improvements to real property purchased pursuant to the abovementioned grant agreement shall receive prior approval of the state building commission. Such disposal shall comply with the general law applicable to counties' sound business practices.

#### **64-10-215. County membership.**

(a) Any county in the eastern grand division not a member of the authority may become a member by:

(1) Notifying the board of its desire to become a member;

(2) Adopting a resolution by a two-thirds ( $\frac{2}{3}$ ) vote of the county legislative body; and

(3) Contributing funds in an amount to be determined by the board, which shall not exceed the highest contribution by any county already a member as adjusted for inflation or deflation by the consumer price index, all cities average, published by the United States department of labor.

(b) Upon approval by the board and the county legislative body of the county seeking to become a member, the county shall become a member of the authority when the authority receives the necessary contribution. When a county is added as a member of the authority, the board shall cause the resolution of the county legislative body providing for addition of the county as a member of the authority to be filed with the secretary of state as an addendum. New members shall be entitled to membership on the board. The county mayor of any such county, or the county mayor's designee, shall become a member of the board for an initial term of office to be established by the board.

#### **64-10-216. Annual reports.**

The board of directors of the authority shall report annually to the governing bodies of the various counties of the area. Such reports shall include a summary of all activities and accomplishments for the period, a copy of the annual audit prepared in accordance with § 64-10-213, and the proposed plans for the next year.

**64-10-217. Dissolution of the corporation — Distribution of assets.**

Upon the dissolution of the corporation, after all creditors of the corporation have been paid, its assets shall be distributed to one (1) or more organizations that qualify as exempt organizations under § 501(c)(3) of the Internal Revenue Code of 1986, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government or an institution of the board of regents system for exclusively public purposes.

**64-10-218. Tax exemption.**

The authority, its properties at any time owned by it and the income and revenues derived from such properties shall be exempt from all state, county and municipal taxation. All bonds, notes and other obligations issued by the authority and the income from such bonds, notes, and other obligations shall be exempt from all state, county and municipal taxation, except inheritance, transfer and estate taxes or except as otherwise provided by state law. Bonds issued by the authority shall be deemed to be securities issued by a public instrumentality or a political subdivision of the state.

**64-10-219. Powers of county, city or utility districts.**

(a) Any county, city or utility district may take all actions under this part by resolution of its governing body. Any county, city or utility district shall have all powers necessary in order to further the purposes of this part.

(b) Any county, city or utility district may enter into agreements with the authority for the orderly transfer of all or any part of its system and to enter into an agreement for the authority to assume, to pay or to refund bonds, notes or other obligations issued by a county, city or utility district entered into by the county, city or utility district to acquire, construct or equip all or any part of a system.

(c) Any county, city or utility district is authorized to advance, donate or lend money to the authority and to provide that funds available to it for a system shall be paid to the authority.

(d) Any county, city or utility district shall have the same right to enter into any agreement with the authority that the wastewater board deems necessary to carry out the purposes of this part as a county, city or utility district has to enter into similar agreements with wastewater treatment authorities as provided by title 68, chapter 221, part 6.

**64-10-220. No restriction or limitation on powers of county, city or utility district — Powers cumulative and supplemental.**

Nothing contained in this part shall be construed as a restriction or a limitation upon any powers that a county, city or utility district might otherwise have under any laws of this state, but shall be construed as cumulative of and supplemental to any such powers. No proceedings, notice or approval shall be required with respect to the issuance of bonds, notes or other obligations of the authority or any instrument as security for the bonds, notes or other obligations except as provided in this part, any law to the contrary notwithstanding; provided, that nothing in this section shall be construed to deprive the state and its governmental subdivisions of their respective police powers or to impair any power of any official or agency of the state and its governmental subdivisions that may be otherwise provided by law.

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**64-10-221. Authority deemed a local government unit.**

For the purposes of this part and title 4, chapter 31, the authority shall be deemed to be a local government unit and shall be eligible for the same grants, loans, and other assistance, and subject to the same obligations and requirements imposed by law related to such grants, loans, and assistance as any other local government unit.

**64-10-222. Construction of part.**

This part is remedial in nature and shall be liberally construed to effect its purpose and the powers granted in this part may be exercised without regard to requirements, restrictions or procedural provisions contained in any other law or charter except as expressly provided in this part.

**65-1-102. Directors — Prohibited activities.**

(a) No director shall hold any other public office, under either the government of the United States or the government of this or any other state, nor shall any director, while acting as such, engage in any business or occupation inconsistent with such person's duties as a director. No director shall be eligible to qualify as a candidate for any elected office unless such director resigns from the authority prior to qualifying as a candidate. For the purposes of this section, "qualify as a candidate" means filing a statement certifying the name and address of a political treasurer pursuant to the provisions of § 2-10-105(e).

(b) No person who owns, in an individual capacity or jointly with another person, any bonds, stocks, equity interest or other property in any business or entity regulated by the Tennessee regulatory authority, or who is an agent or employee in any way of any such business or entity, shall be eligible to serve as a director of the Tennessee regulatory authority.

(c)(1) No director shall raise funds or solicit contributions for any political candidate or political party, or, except as provided in subdivision (c)(2), actively campaign for any candidate for public office.

(2)(A) A director shall be permitted to actively campaign for an "immediate family member" as that phrase is defined in § 8-50-502(8).

(B) The mere attendance of a director at a political event or politically oriented event shall not constitute a violation of subdivision (c)(1).

(C) A director's alleged violation of this subsection (c) shall be treated in the same manner as if such commissioner were a judge covered by Rule 10 of the Rules of the Supreme Court.

(d) No director shall enter into an employment relationship, a consulting or representation agreement, or other similar contract or agreement with either an entity regulated by the authority or a subcontractor of such an entity for a period of one (1) year after the director ceases to serve as a director of the authority.

**65-2-122. Establishment of optional services purchased by regulated entities or unregulated service providers — Cost-based charges for services — Election to use services.**

(a) The authority may establish optional services that may be purchased by regulated entities or other unregulated service providers, which are related to the exercise, administration or enforcement of jurisdiction delegated to the

authority by state or federal law.

(b) The establishment of charges for services described in subsection (a) shall be cost-based.

(c) No charge for services as established in this section shall be applied to any party that does not expressly elect to use such services, and no party shall be required to elect to use such optional services as a condition of initiating any case before the authority.

**65-4-303. Fee measured by gross receipts from intrastate operations — Rates.**

(a) The amount of the fee provided for in this section shall be measured by the amount of the gross receipts from intrastate operations of each public utility in excess of five thousand dollars (\$5,000).

(b)(1) Except as provided in subdivision (b)(2), “gross receipts from intrastate operations”:

(A) Means total revenues, before any deductions, which are recognized by the authority as utility revenue for the purpose of setting intrastate rates under chapter 5 of this title; and

(B) Does not include any revenues from directory operations; provided, that the exclusion of these revenues from directory operations shall not affect the power of the authority to include or exclude these revenues in setting intrastate rates.

(2) For companies that elect market regulation pursuant to § 65-5-109(m), “gross receipts from intrastate operations” means the total revenue derived from the provision of intrastate services to non-affiliated telecommunications carriers, including specifically revenue from interconnection, collocation, billing and collection, inter-carrier compensation, services sold for resale and carrier access; provided, that revenue derived from the provision of retail services and products to consumers that are not telecommunications carriers is excluded.

(c)(1) The fee fixed and assessed against and to be paid by each public utility shall be due and payable on or before April 1, 2014, and each April 1 thereafter, and shall be based on the previous calendar year’s gross receipts from intrastate operations. The fee shall be four dollars and twenty-five cents (\$4.25) per one thousand dollars (\$1,000) of such gross receipts over five thousand dollars (\$5,000), except as set forth in subdivision (c)(2) for companies that provide telecommunications services.

(2)(A) Notwithstanding the calculations in subdivision (c)(1), the minimum inspection fee for companies that elect market regulation pursuant to § 65-5-109(m) shall be forty-nine percent (49%) of the inspection fee that was due by such company on April 1, 2012. Such companies shall file with their fee payments a calculation of both the fee as calculated under subdivision (c)(1) and the alternative minimum calculation established in this subdivision (c)(2)(A).

(B) Notwithstanding the calculation in subdivision (c)(1), the maximum inspection fee for a company providing telecommunications services that does not elect to enter market regulation shall be the inspection fee that was due by such company on April 1, 2012.

(C) In no event, however, shall the minimum inspection fee for any telecommunications service company be less than one hundred dollars

(\$100).

(d) The fee shall be due and payable on or before April 1, 2014, and each April 1 thereafter.

(e) The fee provided for in this section may be recovered by a public utility operating under rate of return regulation through either a rate case proceeding pursuant to § 65-5-103 or a separate recovery mechanism to be determined by the authority. Nothing in this section shall alter the manner in which public utilities that operate under price regulation or market regulation, pursuant to § 65-5-109, may set rates. Nothing in this section shall alter the limitations on the jurisdiction of the authority over market-regulated companies in § 65-5-109. A public utility may recoup its inspection fees by including a line item on its subscribers' bills.

**65-5-103. Changes in utility rates, fares, schedules — Implementation of alternative regulatory methods to allow for public utility rate reviews and cost recovery in lieu of a general rate case proceeding.**

(a) When any public utility shall increase any existing individual rates, joint rates, tolls, fares, charges, or schedules thereof, or change or alter any existing classification, the authority shall have power either upon written complaint, or upon its own initiative, to hear and determine whether the increase, change or alteration is just and reasonable. The burden of proof to show that the increase, change, or alteration is just and reasonable shall be upon the public utility making the same. In determining whether such increase, change or alteration is just and reasonable, the authority shall take into account the safety, adequacy and efficiency or lack thereof of the service or services furnished by the public utility. The authority shall have authority pending such hearing and determination to order the suspension, not exceeding three (3) months from the date of the increase, change, or alteration until the authority shall have approved the increase, change, or alteration; provided, that if the investigation cannot be completed within three (3) months, the authority shall have authority to extend the period of suspension for such further period as will reasonably enable it to complete its investigation of any such increase, change or alteration; and provided further, that the authority shall give the investigation preference over other matters pending before it and shall decide the matter as speedily as possible, and in any event not later than nine (9) months after the filing of the increase, change or alteration. It shall be the duty of the authority to approve any such increase, change or alteration upon being satisfied after full hearing that the same is just and reasonable.

(b)(1) If the investigation has not been concluded and a final order made at the expiration of six (6) months from the date filed of any such increase, change or alteration, the utility may place the proposed increase, change or alteration, or any portion thereof, in effect at any time thereafter prior to the final authority decision thereon upon notifying the authority, in writing, of its intention so to do; provided, that the authority may require the utility to file with the authority a bond in an amount equal to the proposed annual increase conditioned upon making any refund ordered by the authority as provided in subdivision (b)(2).

(2) Where increased rates or charges are thus made effective, the interested utility shall maintain its records in such a manner as will enable it, or

the authority, to determine the amounts to be refunded and to whom due, in the event a refund is subsequently ordered by the authority as provided in this subdivision (b)(2). Upon completion of the hearing and decision, the authority may order the utility to refund, to the persons in whose behalf such amounts were paid, such portion of such increase, change or alteration as shall have been collected under bond and subsequently disallowed by the authority. If the authority, at any time during the initial three (3) months' suspension period, finds that an emergency exists or that the utility's credit or operations will be materially impaired or damaged by the failure to permit the rates to become effective during the three-month period, the authority may permit all or a portion of the increase, change or alteration to become effective under such terms and conditions as the authority may by order prescribe. Any increase, change or alteration placed in effect under the provisions of this subsection (b) under bond may be continued in effect by the utility, pending final determination of the proceeding by final order of the authority or, if the matter be appealed, by final order of the appellate court. Should the final order of the authority be appealed while increased rates or charges are being collected under bond, the court shall have power to order an increase or decrease in the amount of the bond as the court may determine to be proper. In the event that all or any portion of such rates or charges have not been placed into effect under bond before the authority, the court considering an appeal from an order of the authority shall have the power to permit the utility to place all or any part of the rates or charges into effect under bond.

(c) In the event the authority, by order, directs any utility to make a refund, as provided in subsection (b), of all or any portion of such increase, change or alteration, the utility shall make the same within ninety (90) days after a final determination of the proceeding by final order of the authority or, if the matter be appealed, by final order of the appellate court, with lawful interest thereon.

(d)(1)(A) The authority is authorized to implement alternative regulatory methods to allow for public utility rate reviews and cost recovery in lieu of a general rate case proceeding before the authority.

(B) For all alternative regulatory methods, the authority is authorized to develop minimum filing requirements and procedural schedules; provided, however, that a final determination of the authority pursuant to any alternative regulatory method be made by the authority no later than one hundred twenty (120) days from the initial filing by the public utility.

(C) If the authority denies an alternative regulatory method filed by a public utility, the authority shall set forth with specificity the reasons for its denial and the public utility shall have the right to refile, without prejudice, an amended plan or amendment within sixty (60) days of the issuance of a final order. The authority shall thereafter have sixty (60) days to approve or deny the amended plan or amendment.

(2)(A) A public utility may request and the authority may authorize a mechanism to recover the operational expenses, capital costs or both, if such expenses or costs are found by the authority to be in the public interest, related to any one (1) of the following:

- (i) Safety requirements imposed by the state or federal government;
- (ii) Ensuring the reliability of the public utility plant in service; or
- (iii) Weather-related natural disasters.

(B) The authority shall grant recovery and shall authorize a separate recovery mechanism or adjust rates to recover operational expenses,

capital costs or both associated with the investment in such safety and reliability facilities, including the return on safety and reliability investments at the rate of return approved by the authority at the public utility's most recent general rate case pursuant to § 65-5-101 and subsection (a), upon a finding that such mechanism or adjustment is in the public interest.

(3)(A) A public utility may request and the authority may authorize a mechanism to recover the operational expenses, capital costs or both related to the expansion of infrastructure for the purpose of economic development, if such expenses or costs are found by the authority to be in the public interest. Expansion of economic development infrastructure may include, but is not limited to, the following:

- (i) Infrastructure and equipment associated with alternative motor vehicle transportation fuel;
- (ii) Infrastructure and equipment associated with combined heat and power installations in industrial or commercial sites; and
- (iii) Infrastructure that will provide opportunities for economic development benefits in the area to be directly served by the infrastructure.

(B) The authority shall grant recovery and shall authorize a separate recovery mechanism or adjust rates to recover operational expenses, capital costs or both associated with the investment in such economic development facilities, including the return on such economic development investments at the rate of return approved by the authority at the public utility's most recent general rate case pursuant to § 65-5-101 and subsection (a), upon a finding that such mechanism or adjustment is in the public interest.

(4)(A)(i) A public utility may request and the authority may authorize a mechanism to recover expenses associated with efforts to promote economic development in its service territory, if such expenses are found by the authority to be in the public interest.

- (ii) Efforts to promote economic development may include, but are not limited to, foregone revenues associated with economic development riders and rates.

- (iii) Expenses described in subdivision (d)(4)(A)(ii) may be reflected in cost of service and be subject to recovery through the annual review process in subdivision (d)(6).

(B) Upon a finding that expenses to promote economic development have been incurred, the authority shall authorize a separate recovery mechanism or adjust rates to recover such expenses or grant recovery through the annual review process set forth in subdivision (d)(6), upon a finding that such mechanism or adjustment is in the public interest.

(5)(A) A public utility may request and the authority may authorize a mechanism to recover the operational expenses, capital costs or both related to other programs that are in the public interest.

(B) A utility may request and the authority may authorize a mechanism to allow for and permit a more timely adjustment of rates resulting from changes in essential, nondiscretionary expenses, such as fuel and power and chemical expenses.

(C) Upon a finding that such programs are in the public interest, the authority shall grant recovery and shall authorize a separate recovery

mechanism or adjust rates to recover operational expenses, capital costs or both associated with the investment in other programs, including the rate of return approved by the authority at the public utility's most recent general rate case pursuant to § 65-5-101 and subsection (a).

(6)(A) A public utility may opt to file for an annual review of its rates based upon the methodology adopted in its most recent rate case pursuant to § 65-5-101 and subsection (a), if applicable.

(B) In order for a public utility to be eligible to make an election to opt into an annual rate review, the public utility must have engaged in a general rate case pursuant to § 65-5-101 and subsection (a) within the last five (5) years; provided, however, that the authority may waive such requirement or increase the eligibility period upon a finding that doing such would be in the public interest.

(C) Pursuant to the procedures set forth in subdivision (d)(1), the authority shall review the annual filing by the public utility within one hundred twenty (120) days of receipt and order the public utility to make the adjustments to its tariff rates to provide that the public utility earns the authorized return on equity established in the public utility's most recent general rate case pursuant to § 65-5-101 and subsection (a).

(D)(i) A public utility may terminate an approved annual review plan only by filing a general rate case pursuant to § 65-5-101 and subsection (a).

(ii) The authority may terminate an approved annual review plan only after citing the public utility to appear and show cause why the authority should not take such action pursuant to the procedures in § 65-2-106.

(iii) The authority or the public utility may propose a modification to the approved annual review plan for consideration by the authority. The authority shall determine whether any proposed modification is in the public interest and should be approved within the time frame set forth in subdivision (d)(6)(C). If the authority denies a modification to the approved annual review plan, the authority shall set forth with specificity the reasons for its denial.

(7) In addition to the alternative regulatory methods described in this subsection (d), a public utility may opt to file for other alternative regulatory methods. Upon a filing by a public utility for an alternative method not prescribed, the authority is empowered to adopt policies or procedures, that would permit a more timely review and revisions of the rates, tolls, fares, charges, schedules, classifications or rate structures of public utilities, and that would further streamline the regulatory process and reduce the cost and time associated with the ratemaking processes in § 65-5-101 and subsection (a).

(e) For purposes of this section, "public utility" does not include a telecommunications carrier that elects market regulation pursuant to § 65-5-109.

#### **65-5-107. Universal service — Funding.**

(a) In order to ensure the availability of affordable residential basic local exchange telephone service, the authority shall formulate policies, promulgate rules and issue orders which require all telecommunications service providers to contribute to the support of universal service.

(b) The authority shall create an alternative universal service support

mechanism that replaces current sources of universal service support only if it determines that the alternative will preserve universal service, protect consumer welfare, be fair to all telecommunications service providers, and prevent the unwarranted subsidization of any telecommunications service provider's rates by consumers or by another telecommunications service provider. To accomplish these objectives, the authority, if it creates or subsequently modifies an alternative universal service support mechanism, shall:

- (1) Restrict recovery from the mechanism by any telecommunications service provider to an amount equal to the support necessary to provide universal service;
- (2) Consider provision of universal service by incumbent local exchange telephone companies and by other telecommunications service providers;
- (3) Order only such contributions to the universal service support mechanism as are necessary to support universal service and fund administration of the mechanism;
- (4) Administer the universal service support mechanism in a competitively neutral manner, and in accordance with established authority rules and federal statutes;
- (5) Determine the financial effect on each universal service provider caused by the creation or a modification of the universal service support mechanism, and rebalance the effect through a one-time adjustment of equal amount to the rates of that provider;
- (6) When ordering a modification, include changes in the cost of providing universal service in the rebalancing required by subdivision (b)(5);
- (7) When performing its duties under subdivisions (b)(5) and (6), order no increase in the rates for any interconnection services; and
- (8) Consider, at a minimum:
  - (A) The amount by which the embedded cost of providing residential basic local exchange telephone service exceeds the revenue received from the service, including the cost of the carrier-of-last-resort obligation, for both high- and low-density service areas;
  - (B) The extent to which rates for residential basic local exchange telephone service should be required to meet the standards of § 65-5-108(c); and
  - (C) Intrastate access rates and the appropriateness of such rates as a significant source of universal service support.
- (c) The authority shall monitor the continued functioning of universal service mechanisms and shall conduct investigations, issue show cause orders, entertain petitions or complaints, or adopt rules in order to assure that the universal service mechanism is modified and enforced in accordance with the criteria set forth in this section.
- (d) Nothing in this section shall be construed to require the authority to raise residential basic local exchange telephone service rates.
- (e) Any universal service support mechanism created pursuant to this part shall hereafter be known as the universal service program. To implement any such universal service program, there is established a special reserve account in the state's general fund to be funded and allocated in accordance with the provisions of this section and rules promulgated by the authority. Such fund shall be known as the universal service program support mechanism fund. Moneys from the fund may be expended in accordance with such universal service program. Any moneys deposited in the fund shall remain in such

account until expended for purposes consistent with such program and shall not revert to the general fund on any June 30. Any interest earned by deposits in such account shall not revert to the general fund on any June 30 but shall remain in such account until expended for purposes consistent with the universal service program.

**65-5-109. Price regulation plan.**

(a) Rates for telecommunications services are just and reasonable when they are determined to be affordable as set forth in this section. Using the procedures established in this section, the authority shall ensure that rates for all basic local exchange telephone services and non-basic services are affordable on the effective date of price regulation for each incumbent local exchange telephone company.

(b) An incumbent local exchange telephone company shall, upon approval of its application under subsection (c), be empowered to, and shall charge and collect only such rates that are less than or equal to the maximum permitted by this section and subject to the safeguards in § 65-5-108(c) and (d) and the non-discrimination provisions of this title.

(c) The authority shall enter an order within ninety (90) days of the application of an incumbent local exchange telephone company implementing a price regulation plan for such company. With the implementation of a price regulation plan, the rates existing on January 1, 2009, for all basic local exchange telephone services and non-basic services, as defined in § 65-5-108, are deemed affordable if the incumbent local exchange telephone company's earned rate of return on its most recent Tennessee Regulatory Authority 3.01 report as audited by the authority staff pursuant to subsection (j) is equal to or less than the company's current authorized fair rate of return existing at the time of the company's application. If the incumbent local exchange telephone company's earned rate of return on its most recent Tennessee Regulatory Authority 3.01 report as audited by the authority staff pursuant to subsection (j) is greater than the company's current authorized fair rate of return, the authority shall initiate a contested, evidentiary proceeding to establish the initial rates on which the price regulation plan is based. The authority shall initiate such a rate-setting proceeding to determine a fair rate of return on the company's rate base using the actual intrastate operating revenues, expenses, rate base and capital structure from the company's most recent Tennessee Regulatory Authority 3.01 report as audited by the authority staff pursuant to subsection (j). If the incumbent local exchange telephone company's earned rate of return is less than its current authorized fair rate of return, the company may request the authority to initiate a contested, evidentiary proceeding to establish the initial rates upon which the price regulation plan is based. Upon request by the incumbent local exchange telephone company, the authority shall initiate such a contested, evidentiary proceeding using the same rate-setting procedures described above. Rates established pursuant to the above process shall be the initial rates on which a price regulation plan is based, subject to such further adjustment as may be made by the authority pursuant to § 65-5-107. Nothing in this section shall require a company that has elected price regulation prior to 2009 to reapply for price regulation or to reset its rates under its price regulation plan. Such a company is entitled, in its sole discretion, to the 1995 rates upon which its original election was based or may base its price regulation calculation upon rates in effect as of January 1,

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2009.

(d) If not resolved by agreement, the authority shall, on petition of the competing telecommunications services provider, hold a contested case proceeding within thirty (30) days to establish initial rates for new interconnection services provided by an incumbent local exchange telephone company subsequent to June 6, 1995, which rates shall be set in accordance with the provisions set forth in Acts 1995, ch. 408. The authority shall issue a final order within twenty (20) days of the proceeding.

(e) A price regulation plan shall maintain affordable basic and non-basic rates by permitting a maximum annual adjustment that is capped at the lesser of one-half ( $\frac{1}{2}$ ) the percentage change in inflation for the United States using the gross domestic product-price index (GDP-PI) from the preceding year as the measure of inflation, or the GDP-PI from the preceding year minus two (2) percentage points. An incumbent local exchange telephone company may adjust its rates for basic local exchange telephone services or non-basic services only so long as its aggregate revenues for basic local exchange telephone services or non-basic services generated by such changes do not exceed the aggregate revenues generated by the maximum rates permitted by the price regulation plan.

(f) Notwithstanding the annual adjustments permitted in subsection (e), the initial basic local exchange telephone service rates of an incumbent local exchange telephone company subject to price regulation shall not increase for a period of four (4) years from the date the incumbent local exchange telephone company becomes subject to such regulation. At the expiration of the four-year period, an incumbent local exchange telephone company is permitted to adjust annually its rates for basic local exchange telephone services in accordance with the method set forth in subsection (e); provided, that the rate for residential basic local exchange telephone service shall not be increased in any one (1) year by more than the percentage change in inflation for the United States using the gross domestic product-price index (GDP-PI) from the preceding year as the measure of inflation. Nothing in this subsection (f) shall be construed to prohibit or limit residential basic local exchange rate increases or aggregate revenues permitted in subsection (e) caused by:

- (1) Revenue neutral rate proposals that rebalance access revenue or touchtone revenue to residential basic local exchange service;
- (2) Revenue neutral rate proposals that expand local calling areas; or
- (3) Rate regrouping when it is based on population growth or expanded local calling such that there is an increase in the number of lines that end-users within the rate group can reach by local calling and the rate group no longer corresponds to the rate group definitions in a carrier's approved tariffs.

(g) Notwithstanding any other provision of this section, a price regulation plan shall permit a maximum annual adjustment in the rates for interconnection services that is capped at the lesser of one-half ( $\frac{1}{2}$ ) the percentage change in inflation for the United States using the gross domestic product-price index (GDP-PI) from the preceding year as the measure of inflation, or the GDP-PI from the preceding year minus two (2) percentage points. An incumbent local exchange telephone company may adjust its rates for interconnection services only so long as its aggregate revenues generated by such changes do not exceed the aggregate revenues generated by the maximum rates permitted by this subsection (g), provided that each new rate must comply with the require-

ments of § 65-5-108 and the non-discrimination provisions of this title. Upon filing by a competing telecommunications service provider of a complaint, such rate adjustment shall become subject to authority review of the adjustment's compliance with the provisions of this section and rules promulgated under this section. The authority shall stay the adjustment of rates and enter a final order approving, modifying or rejecting such adjustment within thirty (30) days of the complaint.

(h) Incumbent local exchange telephone companies subject to price regulation may set rates for non-basic services as the company deems appropriate, subject to the limitations set forth in subsections (e) and (g), the non-discrimination provisions of this title, any rules or orders issued by the authority pursuant to § 65-5-108(c) and upon prior notice to affected customers. Rates for call waiting service provided by an incumbent local exchange telephone company subject to price regulation shall not exceed, for a period of four (4) years from the date the company becomes subject to such regulation, the maximum rate in effect in the state for such service on January 1, 2009; provided, however, that the maximum rate shall not apply to companies becoming subject to that regulation after June 1, 2009.

(i) Incumbent local exchange telephone companies subject to price regulation are not required to seek regulatory approval of their depreciation rates or schedules.

(j) For any incumbent local exchange telephone company electing price regulation under subsection (c), the authority shall conduct an audit to assure that the Tennessee Regulatory Authority 3.01 report accurately reflects, in all material respects, the incumbent local exchange telephone company's achieved results in accordance with generally accepted accounting principles as adopted in Part 32 of the uniform system of accounts, and the ratemaking adjustments to operating revenues, expenses and rate base used in the authority's most recent order applicable to the incumbent local exchange telephone company. Nothing herein is to be construed to diminish the audit powers of the authority; provided, however, that such an audit shall not be conducted for a local exchange telephone company electing price regulation after June 1, 2009.

(k) Incumbent local exchange telephone companies subject to price regulation shall maintain their commitment to the FYI Tennessee master plan to the completion of the funded requirements with any alterations to the plan to be approved by the authority.

(l)(1) Any nonincumbent certificated provider of local exchange telephone or intrastate long distance telephone service or any incumbent certificated provider of local exchange or intrastate long distance telephone service that has elected price regulation pursuant to subsections (a)–(k) may, in its sole discretion, elect to operate pursuant to market regulation, by filing notice of its intent to do so with the authority, which shall be effective immediately upon filing.

(2) For purposes of the rural exemption under 47 U.S.C. § 251 only, the election to operate pursuant to market regulation by a rural incumbent certificated provider of local exchange or intrastate long distance telephone service, as provided in this section, shall constitute an acknowledgement that a bona fide request for interconnection or services is not unduly economically burdensome, is technically feasible, will not present a risk of a significant adverse economic impact on users of telecommunications services generally, is consistent with 47 U.S.C. § 254 and is consistent with the public interest, convenience and necessity. This subdivision (l)(2) shall not

apply to any telephone cooperative organized pursuant to § 65-29-102.

(m) Upon election of market regulation by a certificated provider, the provider shall be exempt from all authority jurisdiction, including, but not limited to, state-based regulation of retail pricing or retail operations, except as defined in subsection (n). Notwithstanding the limitations on authority jurisdiction over market-regulated companies under state law as set forth in this section, it is the express intent of the general assembly that the Tennessee regulatory authority is authorized as a matter of state law to receive any jurisdiction delegated to it by the federal 1996 Telecommunications Act, in 47 U.S.C. § 214(e), or federal communications commission ("FCC") orders or rules, including, without limitation, jurisdiction granted to hear complaints regarding anti-competitive practices, to set rates, terms and conditions for access to unbundled network elements and to arbitrate and enforce interconnection agreements. In addition, the authority shall continue to exercise its jurisdiction in its role as a dispute resolution forum to hear complaints between certificated carriers, including complaints to prohibit anti-competitive practices and to issue orders to resolve such complaints. The authority shall interpret and apply federal, not state, substantive law, which is hereby adopted so that such law is applicable to intrastate services for the purpose of adjudicating such state complaints. The authority shall adjudicate and enforce such claims in accordance with state procedural law and rules, including the enforcement and penalty provisions of § 65-4-120. No claim shall be brought to the Tennessee regulatory authority as to which the FCC has exclusive jurisdiction. All complaints brought between carriers pursuant to this section shall be resolved by final order of the authority within one hundred eighty (180) days of the filing of the complaint.

(n) A certificated provider electing market regulation shall be subject to the jurisdiction of the authority only when:

(1) The authority is exercising its jurisdiction as described in subsection (m);

(2) The authority is acting with respect to enforcement or modification of any wholesale self effectuating enforcement mechanism plan in place as of January 1, 2009; provided, that such actions are consistent with federal telecommunications law;

(3) The authority is assessing and collecting inspection fees calculated in accordance with chapter 4, part 3 of this title and election of market regulation shall not alter the character of any intrastate revenue or remove any source of intrastate revenue formerly included within gross receipts and used for purposes of assessment of the fees;

(4) The authority is exercising jurisdiction over video service franchises pursuant to the Competitive Cable and Video Services Act, compiled in title 7, chapter 59, part 3;

(5) The authority is exercising jurisdiction respecting underground facilities damage prevention;

(6) The authority is exercising jurisdiction respecting the Tennessee relay center services or the Tennessee Devices Access Program pursuant to § 65-21-115;

(7) [Deleted by 2013 amendment, effective March 26, 2013.]

(8) The authority is exercising jurisdiction respecting the small and minority-owned business participation plan pursuant to § 65-5-112;

(9) [Deleted by 2013 amendment, effective March 26, 2013.]

(10) The authority is exercising jurisdiction respecting universal service funding pursuant to § 65-5-107;

(11) The authority is exercising jurisdiction respecting intrastate switched access service;

(12) [Deleted by 2013 amendment, effective March 26, 2013.]

(13) The authority is exercising jurisdiction respecting extensions of facilities pursuant to § 65-4-114(2), except that no market-regulated carrier shall be subject to the regulatory authority jurisdiction in this subdivision (n)(13) in any wire center or geographic area the carrier designates by filing notice of such designation with the regulatory authority. Such notice shall be effective immediately upon filing and not subject to regulatory authority review;

(14) The authority is exercising jurisdiction pursuant to § 65-4-125; provided, however, that the authority shall exercise its jurisdiction under subsections (a) or (b) only in connection with a complaint.

(o) Incumbent local exchange providers that have elected market regulation shall not be entitled to the limitation on authority jurisdiction in subsection (n) with respect to those residential local exchange telecommunications services that are offered in exchanges with less than three thousand (3,000) access lines or, for carriers who serve more than one million (1,000,000) access lines in this state, those exchanges with access line counts and calling areas that would result in classification as rate group 1 or 2 under any such carrier's tariff in effect on January 1, 2009, and that are offered as single, individually priced services at a rate-group specific price rather than a state-wide or territory-wide price, except as follows:

(1) Upon petition by a market-regulated provider, the authority may order that such services shall be subject to the limitations on jurisdiction in subsection (n) by showing that each exchange has at least two (2) nonaffiliated telecommunications providers that offer service to customers in each zone rate area of each exchange;

(2) When counting the number of providers for the purpose of evaluating the competition standard in subdivision (o)(1), cable television providers that offer telephone and broadband services to residential customers may be included. Nonaffiliated providers of wireless service may be included in the count of providers but shall only count as one (1) provider regardless of the number of wireless providers. Nonaffiliated providers of voice over Internet protocol service shall not be counted for the purpose of evaluating the competitive exemption for residential service, unless the carrier seeking exemption offers a data service capable of supporting voice over Internet protocol service and does not require the purchase of voice telephony products to buy the data service. At least one (1) provider must be facilities-based and currently serving residential customers;

(3) When the petitioning party shows facts satisfying the competition standard set forth in subdivision (o)(1), the petitioner shall be entitled to a rebuttable presumption that the competition standard is satisfied;

(4) The petition shall be subject to an accelerated schedule. The authority must issue its decision on the petition, including its reasons, within ninety (90) days of the filing of the petition;

(5) Unregulated providers of service shall not be required to participate in the authority's docket considering the petition, but, to the extent such competitors intervene, they shall be required to provide discovery responses

regarding the activities of the unregulated provider in such rate groups or exchanges. To the extent the petitioner seeks, but is unable to obtain discovery response from intermodal or unregulated providers regarding the competition present in such rate groups or exchanges, the petitioner shall be entitled to a rebuttable presumption that the unregulated provider is offering service in the area that is the subject of the petition;

(6) Whether or not such a petition is filed or granted, the limitations on authority jurisdiction set forth in subsection (n) shall automatically become applicable to all services of a market-regulated provider as of January 1, 2015; and

(7) The petition provided for in this subsection (o) shall be filed no earlier than one (1) year following May 21, 2009.

(p) Notwithstanding this section, providers that elect market regulation shall remain subject to the Tennessee Consumer Protection Act, compiled in title 47, chapter 18.

(q) Each year the authority shall prepare and submit to the general assembly a report describing the competitive nature of the communications market in Tennessee.

(1) The report shall, at a minimum, contain the following information:

(A) The number of telecommunications providers, including the technology used to provide service;

(B) The number of providers by county serving residential subscribers;

(C) The number of providers by county serving business subscribers;

and

(D) The number of customers by customer type.

(2) In preparing the report, the authority shall rely on information filed with the authority or available as public information. The authority shall invite all providers of telecommunications services, including companies operating under market regulation, price cap regulation pursuant to § 65-5-109, rate of return regulation, competitive carriers, wireless carriers, carriers offering voice over Internet protocol service, cable operators or other carriers known to provide such service in this state, to provide voluntary reports supplying information relating to the items in subdivision (q)(1) and relating to the services and products offered in this state and any other information the provider volunteers concerning future plans for deployment, new services, new technology or the scope of competition.

(r) In the event that a carrier has elected market regulation and later chooses to exit the business of providing local exchange telephone service in an exchange by selling all of its network in that exchange to another entity, then the following shall apply:

(1) If the purchasing entity is a certificated carrier of local exchange telephone service in this state, then no regulatory requirements shall apply, except that nothing in this section shall preclude the exercise of authority jurisdiction as set forth in subsection (m); and

(2) Any purchasing entity that applies for a certificate in connection with a sale of the type described in this section shall be subject to no greater standards than those applied by the authority for other entities seeking certification pursuant to § 65-4-201; and an authority order granting or denying the certificate, including appropriate findings of fact and conclusions of law, shall be entered no later than thirty (30) days from the filing of the application.

(s) Notwithstanding any other laws to the contrary, including, but not

limited to, subsections (c) and (j), the earnings of an incumbent local exchange company operating under rate of return regulation shall not be considered in setting initial rates under this section for an incumbent local exchange company implementing a price regulation plan after January 1, 2009.

(t) Notwithstanding any law to the contrary, any certificated provider of local exchange telephone service subject to market regulation may, at its election, file a tariff with the authority governing the rates, terms and conditions of any of its services. Such filed tariff shall become effective upon filing and be deemed approved, unless rejected by the authority upon finding that the tariff violates applicable law within twenty-one (21) days of filing. The approval of a tariff under this subsection (t) shall constitute publication and notice to consumers of the provisions of the tariff, specifically those provisions governing carrier and consumer liability, for purposes of the filed rate doctrine. Unless rejected as provided herein, such tariffs shall constitute binding tariffs to the same extent as tariffs of other providers not subject to market regulation, including application of the filed rate doctrine, and shall be subject to the rules and regulations of the authority governing customer notices to the same extent as such rules apply to providers not subject to market regulation.

(u) The regulatory authority is prohibited from creating any new programs mandating discounts on retail telecommunications services or equipment without providing reimbursement to carriers. Any such unfunded discount program mandated by rules or orders of the regulatory authority or public service commission that was in place as of March 26, 2013, shall terminate sixty (60) days following March 26, 2013. Nothing in this subsection (u) shall apply to existing regulatory authority programs providing services for the hearing impaired.

(v) The regulatory authority shall not impose any requirements relating to issuance or maintenance of a certificate pursuant to § 65-4-201 on any market-regulated entity or on any affiliate of a market-regulated entity.

#### **65-5-113. Assistance program for small and minority-owned businesses.**

(a) The department of the treasury shall develop by rule an assistance program for small and minority-owned businesses, as defined in § 65-5-112, which may include loans and loan guarantees, technical assistance and services, and consulting and educational services to be funded solely from the fund established in subsection (b). The department shall administer the small and minority-owned business assistance program. It is the legislative intent that such program be designed with consideration of fair distribution of program assistance among the geographic areas of the state, the grand divisions, and small and minority-owned businesses. It is the legislative intent that the department use the assistance provided by this program to support the department's outreach to new, expanding, and existing businesses in Tennessee that do not have reasonable access to capital markets and traditional commercial lending facilities.

(b) There is established a general fund reserve to be allocated in accordance with the small and minority-owned business assistance program by this section which shall be known as the small and minority-owned business assistance program fund. Moneys from the fund may be expended in accordance with such program. Any moneys deposited in the fund shall remain in

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the reserve until expended for purposes consistent with such program and shall not revert to the general fund on any June 30. Any interest earned by deposits in the reserve shall not revert to the general fund on any June 30 but shall remain available for expenditure in subsequent fiscal years.

(c) It is within the state treasurer's discretion to accept new applications to participate in the small and minority-owned business assistance program after July 1, 2013. After July 1, 2013, the program shall administer all loans that are outstanding as of July 1, 2013, until the loans are matured or written-off. After July 1, 2013, and notwithstanding subsection (b), a portion of the small and minority-owned business program funds shall be transferred to the board of trustees of the baccalaureate education system trust fund program to be utilized in an incentive plan or plans authorized in § 49-7-805(4), reserving such amounts that the state treasurer deems necessary for the administration of the small and minority-owned business program, as well as the administration and marketing of the incentive plan or plans. At least annually, the state treasurer shall evaluate the loan payments received by the small and minority-owned business assistance program and shall have the authority to transfer the funds from loan payments to the baccalaureate education system trust fund program while reserving amounts for continued administration of the small and minority-owned business assistance program.

**65-23-101. [Repealed.]**

**65-23-102. [Repealed.]**

**65-23-103. [Repealed.]**

**65-23-104. [Repealed.]**

**65-23-105. [Repealed.]**

**65-23-106. [Repealed.]**

**65-23-107. [Repealed.]**

**65-23-108. [Repealed.]**

**65-23-109. [Repealed.]**

**65-23-110. [Repealed.]**

**65-23-111. [Repealed.]**

**65-23-112. [Repealed.]**

**65-23-113. [Repealed.]**

**65-23-114. [Repealed.]**

**65-23-115. [Repealed.]**

**65-23-116. [Repealed.]**

**65-23-117. [Repealed.]**

**65-23-118. [Repealed.]**

**65-23-119. [Repealed.]**

**65-23-120. [Repealed.]**

**65-23-121. [Repealed.]**

**65-23-122. [Repealed.]**

**65-23-123. [Repealed.]**

**65-31-114. Underground utility damage prevention advisory committee.**

(a) There is created the underground utility damage prevention advisory committee, to be composed of twenty (20) members as follows:

(1) The executive director of the Tennessee regulatory authority or the director's designee;

(2) The commissioner of transportation or the commissioner's designee;

(3) The president of Tennessee 811 or the president's designee;

(4) The executive director of the Tennessee county services association or the director's designee;

(5) The executive director of Tennessee Municipal League or the director's designee;

(6) The executive director of the Tennessee Association of Utility Districts or the director's designee;

(7) The executive director of the Tennessee Electric Cooperative Association or the director's designee;

(8) The executive director of the Tennessee Municipal Electric Power Association or the director's designee;

(9) A designee of the Tennessee Cable and Telecommunications Association;

(10) A designee of the Tennessee Road Builders Association;

(11) A designee of the Tennessee Farm Bureau;

(12) A representative from the rail road industry;

(13) A representative of the natural gas interstate pipeline industry;

(14) A representative of the liquid petroleum interstate pipeline industry;

(15) A designee of the Associated Builders and Contractors of Tennessee;

(16) A designee of the Tennessee Gas Association;

(17) A representative from a large Tennessee incumbent local exchange carrier;

(18) A representative from a small Tennessee incumbent local exchange carrier;

(19) A designee of the Tennessee Association of General Contractors; and

(20) An engineer designated by the American Council of Engineering Companies.

(b) The underground utility damage prevention advisory committee shall

study the nine (9) elements identified at 49 U.S.C. § 60134(b) for an effective damage prevention program and any rules or regulation promulgated by the United States department of transportation's pipeline and hazardous materials safety administration (PHMSA) and shall make recommendations on how Tennessee can best comply with the federal law, rules, and regulations. The committee shall report its findings and recommendations to the governor, speaker of the senate, speaker of the house of representatives, and comptroller of the treasury no later than November 1, 2013. The committee's report shall include the following:

- (1) A recommendation on which agency or agencies in state government shall be responsible for administration, enforcement, and adjudication of a compliant underground damage prevention program. Such recommendation shall address ongoing stakeholder participation in the process;
  - (2) A recommendation addressing the amount of civil penalties and the application of such penalties to major and minor offenses and offenders;
  - (3) A recommendation on how such underground prevention program should be funded and how civil penalties should be distributed. Such recommendation shall include funding for improved education and training to prevent underground damage;
  - (4) A recommendation to accomplish mandatory membership including a definition of a utility for membership purposes and a timeline for phasing in mandatory membership;
  - (5) A review and recommendation on the appropriate definitions of activities subject to the underground damages statute;
  - (6) A recommendation for reporting underground utility damage incidents to include the form and content of such reports. Such reports should include an analysis of causes of damage and effectiveness of prevention measures;
  - (7) A recommendation for a process to assist in underground utility location in the design phase of construction projects; and
  - (8) A recommendation for deploying mandatory electronic underground utility locating technology for future utility construction.
- (c) The members of the underground utility damage prevention advisory committee shall serve without compensation.
- (d) Upon completion of its report of recommended legislation, the underground utility damage prevention advisory committee shall cease to exist.

#### **65-32-104. Discontinuance of service — Notice.**

- (a) A utility shall not discontinue service to a user for nonpayment of services until:
- (1) A notice has been mailed to the user stating that service shall be discontinued unless payment is made within a specified time; and
  - (2) A reasonable, good faith effort is made to notify the user by a utility representative in person that service shall be discontinued on a date certain. Placing a telephone call or sending electronic mail by the utility representative constitutes a reasonable good faith effort; provided, however, that the utility representative need not place a telephone call or send electronic mail to any residence where service has been discontinued within the previous four (4) years.
- (b) After such notification procedures have been taken and a user does not

make payment of the arrearage or make payment arrangements acceptable to the utility, then service to such user may be discontinued.

**66-5-108. Preservation, or extinguishment and reversion of mineral interests.**

(a)(1) The general assembly finds that many owners of agricultural property who have separated titles have difficulty acquiring loans and in other ways have been hindered in fully developing the surface of land.

(2) The general assembly further finds that there are mineral estates, separated from the surface, that have not been properly registered in the counties in which they are located, and are, therefore, not on the tax rolls, causing a significant loss of revenue to many Tennessee counties.

(3) Further, the general assembly finds that many surface owners cannot discover from records at their courthouses whether they own the underlying mineral estate, or if they do not, who does, and that this situation causes undue hardship and title uncertainty for surface owners.

(4) The general assembly further finds that where there are abandoned mineral estates, those on which no development has taken place, no taxes paid and no claim filed pursuant to this section, the rational development of minerals in Tennessee is hindered.

(5) Thus, to promote commerce and agriculture and proper development of surface and mineral estates and to remedy uncertainties in title, the general assembly adopts this section.

(b) For the purposes of this section and §§ 67-5-804(b), 67-5-809 and 67-5-2502(e):

(1) "Mineral interest" means the interest which is created by an instrument, transferring either by grant, assignment, or reservation, or otherwise, an interest, of any kind, in coal, oil and gas, and other minerals;

(2) "Statement of claim" means a document or instrument to be filed by the owner of a mineral interest in real property to make claim to that mineral interest; and

(3) "Use of mineral interest" means that a mineral interest shall be deemed to be used when there are any minerals being produced thereunder or when operations are being conducted thereon for injection, withdrawal, storage or disposal of water, gas or other fluid substances, or when rentals or royalties are being paid to the owner thereof for the purposes of delaying or enjoying the use or exercise of such rights, or when any such use is being carried out on any tract with which such mineral interest may be unitized or pooled for production purposes, or when taxes are paid on such mineral interest by the owner of the land.

(c) Any interest in coal, oil and gas, and other minerals shall, if unused for a period of twenty (20) years, be extinguished, unless a statement of claim is filed in accordance with subsection (d), and the ownership of the mineral interest shall revert to the owner of the surface.

(d)(1) The statement of claim provided in subsection (c) shall be filed by the owner of the mineral interest prior to the end of the twenty-year period set forth in subsection (c) or within three (3) years after July 1, 1987, whichever is later.

(2) The statement of claim shall contain the name and address of the owner or owners of such mineral interest. The claim shall cite tax maps and parcel numbers for the owner or owners of surface above the mineral estate,

and a reference to the instrument under which the interest is claimed.

(3) The statement of claim shall be filed with the office of the register of deeds in the county in which such land is located.

(4) Upon filing of the statement of claim within the time provided, it shall be prima facie evidence in any legal proceedings that such mineral interest was being used on the date the statement of claim was filed.

(e)(1) Any person who will succeed to the ownership of any mineral interest upon the lapse thereof may commence such lapse by filing, with the clerk and master of the county in which the mineral interest is located, a complaint of claim of abandoned mineral interest which may be in the following or a similar form:

COMPLAINT FOR CLAIM OF ABANDONED MINERAL INTEREST

I, \_\_\_\_\_, after being duly sworn according to law, would state to the Court as follows:

1. My full name is \_\_\_\_\_ and I reside at \_\_\_\_\_ (address).

2. I am the current owner of record of a surface estate located at \_\_\_\_\_ of record in Book \_\_\_\_\_, Page \_\_\_\_\_, Register's Office of \_\_\_\_\_ County, Tennessee.

3. After inquiring with the county property assessor, I am not aware of any tax being paid for the mineral estate which underlies my surface estate. The mineral estate is of record (if known) in Book \_\_\_\_\_, Page \_\_\_\_\_, Register's Office of \_\_\_\_\_ County, Tennessee. The name of the mineral interest owner (if known) is \_\_\_\_\_ and the address (if known) is \_\_\_\_\_.

4. Upon reasonable inquiry, I am not aware of any use being made of the mineral estate underlying my surface estate as defined in Tennessee Code Annotated, § 66-5-108.

5. I believe the mineral interest is abandoned.

6. Upon the publishing of notice as required by Tennessee Code Annotated, § 66-5-108 and the failure of the mineral interest owner to file a statement of claim, plaintiff demands that the mineral interest be declared to be abandoned, that the interest lapse and be reunited with the above-mentioned surface estate.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Signature of surface owner)

State of Tennessee

County of \_\_\_\_\_

Personally appeared before me, \_\_\_\_\_ of the county,

(name of clerk or deputy)

(plaintiff's name) \_\_\_\_\_, the within named plaintiff, having been duly sworn

who acknowledged that plaintiff executed the within instrument for the purposes therein contained.

Witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires: \_\_\_\_\_.

(2) The complaint shall be verified and filed by the clerk and master upon payment of the fee provided in subdivision (e)(8).

(3) Upon the filing of a complaint of claim of abandoned mineral interest the clerk and master shall give notice that the mineral interest identified in

the complaint shall lapse in sixty (60) days by publishing the same once a week for three (3) consecutive weeks in a newspaper of general circulation in the county in which such mineral interest is located, and shall send by certified mail within ten (10) days after such publication a copy of such notice to the owner of such mineral interest identified by the plaintiff in the complaint of claim of abandoned mineral interest.

(4) If, within sixty (60) days after publication provided in subdivision (e)(3), the mineral interest owner does not file with the clerk and master an answer alleging a claim to the mineral interest, the clerk and master shall so certify to the chancellor who shall enter the following order declaring the mineral interest has lapsed and vesting title to the mineral interest in the owner of the surface estate:

Order

The cause came to be heard this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before the Honorable \_\_\_\_\_, Chancellor of the Chancery Court for \_\_\_\_\_ County, upon the Complaint for Claim of Abandoned Mineral Interest pursuant to Tennessee Code Annotated, § 66-5-108, and certification by the Clerk and Master that no answer has been filed after providing the notice required by that statute.

The Court, therefore, finds that there has been no use of the mineral interest located at \_ of record, if known, in Book \_\_\_\_, Page \_\_\_\_, Register's Office of \_\_\_\_ County, Tennessee, as defined in Tennessee Code Annotated, § 66-5-108; and the mineral interest has been abandoned.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the mineral interest located at \_\_\_\_\_, of record, if known, in

(Address)

Book \_\_\_\_, Page \_\_\_\_, Register's Office of \_\_\_\_ County, Tennessee, is abandoned and that mineral estate shall be reunited to the surface interest titled to \_\_\_\_\_ of record in

(name of surface owner)

Book \_\_\_\_, Page \_\_\_\_, Register's Office of \_\_\_\_ County, Tennessee.

\_\_\_\_\_  
Chancellor

(5) All notices provided for in this section shall state the name of the owner of the mineral interest, if known, as shown of record, a description of the land and the name of the person filing the complaint of claim of abandoned mineral interest.

(6) In any county having a population of not less than thirty-two thousand six hundred (32,600) nor more than thirty-two thousand seven hundred (32,700) according to the 1980 federal census or any subsequent federal census, upon the filing of the statement of claim provided in subsection (d) or the order provided in subdivision (e)(4) in the register of deeds office for the county where such interest is located, the register shall record the same in a book to be kept for that purpose, which shall be known as the "Dormant Mineral Interest Record," and shall indicate by marginal notation on the instrument creating the original mineral interest and the instrument creating the interest of the current surface owner, the filing of the statement of claim or order.

(7) In order for the judicially determined lapse to be effective as to the subsequent interest holders, a certified copy of the final order evidencing the same must be recorded in the register of deeds office in the county where the

property is located.

(8) The clerk and master shall charge a fee of thirty dollars (\$30.00) for the filing of the complaint of claim of abandoned mineral interest and the order provided for in this section and shall collect the fees necessary for the publication required in this section.

(9) No complaint for claim of abandoned mineral interest shall be accepted for filing prior to July 1, 1990.

(f)(1) Upon the filing of the statement of claim as provided in subsection (c), the register shall record the same in a book to be kept for that purpose which shall be known as the "Dormant Mineral Interest Record" and shall enter in the index where the instrument creating the original mineral interest is indexed a notation referencing the statement of claim. Upon the filing of the order as provided in subdivision (e)(4), the register shall record the order in the Dormant Mineral Interest Record and shall enter the filing of the order in the indexes referencing the instrument creating the original mineral interest and the instrument creating the interest of the current surface owner.

(2) In any county having a population of not less than thirty-two thousand six hundred (32,600) nor more than thirty-two thousand seven hundred (32,700) according to the 1980 federal census or any subsequent federal census, upon the filing of the statement of claim as provided in subsection (c) or the proof of service of notice as provided in subsection (e) in the register of deeds office for the county where such interest is located, the register shall record the same in a book to be kept for that purpose, which shall be known as the "Dormant Mineral Interest Record," and shall indicate by marginal notation on the instrument creating the original mineral interest the filing of the statement of claim or affidavit of publication and service of notice.

(g) The provisions of Acts 1987, chapter 282, may not be waived at any time prior to the expiration of the twenty-year period provided in subsection (c).

(h) This section applies in all ways to property owned by the state of Tennessee.

(i) The provisions of this section may not be waived at any time prior to the expiration of the twenty-year period provided in subsection (c).

(j) No action shall be brought by any person to contest the lapse of a mineral interest pursuant to this section after three (3) years from the date such interest lapsed.

(k)(1) Any person who prevails in an action to quiet title to challenge a statement of claim or a complaint for claim of abandoned mineral interests filed pursuant to this section may be awarded reasonable attorney's fees and costs if the court finds that the statement of claim or the complaint was not filed in good faith. A court may find that a statement of claim or the complaint was not filed in good faith if such was filed without reasonable inquiry, with no factual basis, and for purposes of harassment.

(2) If the court finds no record of taxes paid or statement of claim filed for the lapsed mineral interests which references the mineral estate by tax map and parcel number, then a complaint for claim of abandoned mineral interest shall be deemed to have been filed in good faith.

(l) The only parties of interest pursuant to this section shall be an owner of the mineral interest and a person who shall succeed to the ownership of the mineral interest upon its lapse. Any third person claiming title or interest in any matter pursuant to this section shall prove by verified complaint, affidavit

or other evidence that the third person's rights are or will be violated and that such third person will suffer injury, loss or damage if not allowed to become a party thereto.

**66-11-101. Chapter definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Contract" means an agreement for improving real property, written or unwritten, express or implied, and includes extras as defined in this section;

(2) "Contract price" means the amount agreed upon by the contracting parties to be paid for performing work or labor or for furnishing materials, machinery, equipment, services, overhead and profit, included in the contract, increased or diminished by the price of extras or breach of contract, including defects in workmanship or materials. If no price is agreed upon by the contracting parties, "contract price" means the reasonable value of all work, labor, materials, services, equipment, machinery, overhead and profit included in the contract;

(3) "Extras" means labor, materials, services, equipment, machinery, overhead and profit, for improving real property, authorized by the owner and not included in previous contracts;

(4)(A) "Furnish materials" means:

(i) To supply materials that are intended to be and are incorporated in the improvement;

(ii) To supply materials that are intended to be and are delivered to the site of the improvement and become normal wastage in construction operations;

(iii) To specially fabricate materials for incorporation in the improvement and, if not delivered to the site of the improvement, are not readily resalable by the lienor;

(iv) To supply materials that are used for the construction and do not remain in the improvement, subject to diminution by the salvage value of such material; or

(v) To supply tools, equipment, or machinery as permitted by § 66-11-102(g);

(B) The delivery of materials to the site of the improvement shall be prima facie evidence of incorporation of such materials in the improvement;

(5) "Improvement" means the result of any action or any activity in furtherance of constructing, erecting, altering, repairing, demolishing, removing, or furnishing materials or labor for any building, structure, appurtenance to the building or structure, fixture, bridge, driveway, private roadway, sidewalk, walkway, wharf, sewer, utility, watering system, or other similar enhancement, or any part thereof, on, connected with, or beneath the surface; the drilling and finishing of a well, other than a well for gas or oil; the furnishing of any work and labor relating to the placement of tile for the drainage of any lot or land; the excavation, cleanup, or removal of hazardous and nonhazardous material or waste from real property; the enhancement or embellishment of real property by seeding, sodding, or the planting on real property of any shrubs, trees, plants, vines, small fruits, flowers, nursery stock, or vegetation or decorative materials of any kind; the taking down,

cleanup, or removal of any existing shrubs, trees, plants, vines, small fruits, flowers, nursery stock, or vegetation or decorative materials of any kind then existing; excavating, grading or filling to establish a grade; the work of land surveying, as defined in § 62-18-102, and the performance of architectural or engineering work, as defined in title 62, chapter 2, with respect to an improvement actually made to the real estate. As the context requires, “improvement” also means the real property thus improved;

(6) “Laborer” means any individual who, under contract, of any degree of remoteness, personally performs labor for improving real property on the site of the improvement;

(7) “Lienor” means any person having a lien or right of lien on real property by virtue of this chapter, and includes the person’s successor in interest;

(8) “Owner” includes the owner in fee of real property, or of a less estate in real property, a lessee for a term of years, a vendee in possession under a contract for the purchase of real property, and any person having any right, title or interest, legal or equitable, in real property, that may be sold under process;

(9) “Owner-occupant” means any owner of real property who, at the time the owner contracts for the improvement of the real property, occupies the real property as the owner’s principal place of residence;

(10) “Perform”, when used in connection with the words labor or services, means performance by the lienor or by another for the lienor;

(11) “Person” means an individual, corporation, limited liability company, partnership, limited partnership, sole proprietorship, joint venture, association, trust, estate, or other legal or commercial entity;

(12) “Prime contractor” means a person, including a land surveyor as defined in § 62-18-102, a person licensed to practice architecture or engineering under title 62, chapter 2, and any person other than a remote contractor who supervises or performs work or labor or who furnishes material, services, equipment, or machinery in furtherance of any improvement; provided, that the person is in direct privity of contract with an owner, or the owner’s agent, of the improvement. A “prime contractor” also includes a person who takes over from a prime contractor the entire remaining work under such a contract;

(13) “Real property” includes real estate, lands, tenements and hereditaments, corporeal and incorporeal, and fixtures and improvements thereon;

(14) “Remote contractor” means a person, including a land surveyor as defined in § 62-18-102 and a person licensed to practice architecture or engineering under title 62, chapter 2, who provides work or labor or who furnishes material, services, equipment or machinery in furtherance of any improvement under a contract with a person other than an owner;

(15) “Single family residence” means any real property owned and occupied by no one other than the owner and the owner’s immediate family; and

(16) “Visible commencement of operations” means the first actual work of improving upon the land or the first delivery to the site of the improvement of materials, that remain on the land until actually incorporated in the improvement, of such manifest and substantial character as to notify interested persons that an improvement is being made or is about to be made on the land, excluding, however, demolition, surveying, excavating, clearing, filling or grading, placement of sewer or drainage lines or other utility lines

or work preparatory therefor, erection of temporary security fencing and the delivery of materials therefor.

**66-11-102. Lien for work and materials.**

(a) There shall be a lien on any lot or tract of real property upon which an improvement has been made by a prime contractor or any remote contractor; provided, that the lienor has complied with title 62, chapter 6. If the lienor has not fully complied with title 62, chapter 6, no lien is established by this chapter. The lien shall secure the contract price.

(b) The lien established by this section shall include a lien on any lot or tract of real property in favor of any land surveyor who has, by contract with the owner or agent of the owner of the real property, performed on the property the practice of land surveying, as defined in § 62-18-102(3). The lien shall secure the contract price.

(c)(1) The lien established by this section shall include a lien on any lot or tract of real property upon which an improvement has been made, by contract with the owner or the owner's agent, in favor of any person licensed to practice architecture or engineering under title 62, chapter 2, for architectural or engineering services performed with respect to the improvement actually made. The lien shall secure the contract price.

(2) The lien provided for in subdivision (c)(1) shall attach as of the time of visible commencement of operations as provided in § 66-11-104.

(3) The provisions of this subsection (c) shall not apply to owner-occupants of one-family or two-family detached unit homes.

(d) Notwithstanding any other provision of this chapter, no prime contractor or remote contractor of a lessee of real property may encumber the fee estate unless the lessee is deemed to be the fee owner's agent. In determining whether a lessee is the fee owner's agent, the court shall determine whether the fee owner has the right to control the conduct of the lessee with respect to the improvement and shall consider:

(1) Whether the lease requires the lessee to construct a specific improvement on the fee owner's property;

(2) Whether the cost of the improvement actually is borne by the fee owner through corresponding offsets in the amount of rent the lessee pays;

(3) Whether the fee owner maintains control over the improvement; and

(4) Whether the improvement becomes the property of the fee owner at the end of the lease.

(e) A lien arising under this chapter shall not include in the lien amount any interest, service charges, late fees, attorney fees, or other amounts to which the lienor may be entitled by contract or law that do not result in an improvement to the real property or are otherwise not permitted by this chapter.

(f) When a lienor, without default, is prevented from completely performing the lienor's part, the lienor is entitled to a lien for as much of the contract price as the lienor has performed in proportion to the contract price for the whole, and the lienor's claim shall be adjusted accordingly.

(g) A lien for furnishing tools, equipment, or machinery arises under this chapter to the following extent:

(1) For the reasonable rental value for the period of actual use and any reasonable period of nonuse taken into account in the rental contract; except that the reasonable rental value and reasonable periods of use and nonuse

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need not be determined solely by the contract; or

(2) For the purchase price of the tools, equipment or machinery, but the lien for the price only arises if the tools, equipment or machinery were purchased for use in the course of the particular improvement and have no substantial value to the lienor after the completion of the improvement on which they were used.

**66-11-104. Time of attachment of lien.**

(a) The lien provided by this chapter shall attach and take effect from the time of the visible commencement of operations, excluding however, demolition, surveying, excavating, clearing, filling or grading, placement of sewer or drainage lines, or other utility lines or work preparatory therefor, erection of temporary security fencing and the delivery of materials therefor.

(b) If there is a cessation of all operations at the site of the improvement for more than ninety (90) days and a subsequent visible resumption of operations, any lien for labor performed or for materials furnished after the visible resumption of operations shall attach and take effect only from the visible resumption of operations.

(c) Nothing in this section shall affect the priority or parity of any liens as established by any section of this chapter.

**66-28-201. Terms and conditions.**

(a) The landlord and tenant may include in a rental agreement, terms and conditions not prohibited by this chapter or other rule of law including rent, term of the agreement, and other provisions governing the rights and obligations of parties. A rental agreement cannot provide that the tenant agrees to waive or forego rights or remedies under this chapter. The landlord or the landlord's agent shall advise in writing that the landlord is not responsible for, and will not provide, fire or casualty insurance for the tenant's personal property.

(b) In absence of a lease agreement, the tenant shall pay the reasonable value for the use and occupancy of the dwelling unit.

(c) Rent shall be payable without demand at the time and place agreed upon by the parties. Notice is specifically waived upon the nonpayment of rent by the tenant only if such a waiver is provided for in a written rental agreement. Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one (1) month or less and otherwise in equal monthly installments at the beginning of each month. Upon agreement, rent shall be uniformly apportionable from day to day.

(d) There shall be a five-day grace period beginning the day the rent was due to the day a fee for the late payment of rent may be charged. The date the rent was due shall be included in the calculation of the five-day grace period. If the last day of the five-day grace period occurs on a Sunday or legal holiday, as defined in § 15-1-101, the landlord shall not impose any charge or fee for the late payment of rent; provided, that the rent is paid on the next business day. Any charge or fee, however described, which is charged by the landlord for the late payment of rent, shall not exceed ten percent (10%) of the amount of rent past due.

(e) [Deleted by 2013 amendment, effective April 23, 2013.]

**66-28-503. Fire or casualty damage.**

(a) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that the use of the dwelling unit is substantially impaired, the tenant:

(1) May immediately vacate the premises; and

(2) Shall notify the landlord in writing within fourteen (14) days thereafter of the tenant's intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating.

(b) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that restoring the dwelling unit or premises to its undamaged condition requires the tenant to vacate the premises, the landlord is authorized to terminate the rental agreement within fourteen (14) days of providing written notice to the tenant.

(c) If the rental agreement is terminated, the landlord shall return all prepaid rent and security deposits recoverable under § 66-28-301. If the tenant vacates pursuant to this section, accounting for rent is to occur as of the date the tenant returns the keys to the landlord or has, in fact, vacated the dwelling unit or premises whichever date is earlier.

**67-4-409. Recordation tax.**

(a) **Transfers of Realty.** On all transfers of realty, whether by deed, court deed, decree, partition deed, or other instrument evidencing transfer of any interest in real estate, there shall be paid for the privilege of having the same recorded a tax, for state purposes only, of thirty-seven cents (37¢) per one hundred dollars (\$100), as follows:

(1) On the transfer of a freehold estate, the tax shall be based on the consideration for the transfer, or the value of the property, whichever is greater. "Value of the property," as used in this section, means the amount that the property transferred would command at a fair and voluntary sale, and no other value;

(2) No transfer tax shall be due or paid on the transfer of a leasehold estate;

(3) No such tax shall be levied on the transfer of any real estate where such:

(A) Is creation or dissolution of a tenancy by the entirety:

(i) By the conveyance from one (1) spouse to the other;

(ii) By the conveyance from one (1) spouse or both spouses to the original grantor or grantors in the instrument and the original grantor's spouse; or

(iii) By the conveyance from one (1) spouse or both spouses to a trustee and immediate reconveyance by the trustee in the same instrument as tenants in common, tenants in common with right of survivorship, joint tenants or joint tenants with right of survivorship;

(B) Are deeds of division in kind of realty formerly held by tenants in common;

(C) Is release of a life estate to the beneficiaries of the remainder interest;

(D) Are deeds executed by an executor to implement a testamentary devise;

(E) Are domestic settlement decrees and/or domestic decrees and/or

deeds that are an adjustment of property rights between divorcing parties;

(F) Are transfers by a transferor of real estate to a revocable living trust created by the same transferor or by a spouse of the transferor, or transfers by the trustee of a revocable living trust back to the same transferor or to the transferor's spouse; or

(G) Are deeds executed by the trustee of a revocable living trust to implement a testamentary devise by the trustor of the trust;

(4) In the case of quitclaim deeds, the tax shall be based only on the actual consideration given for that conveyance;

(5) No oath of value shall be required in any transaction that is exempt from tax;

(6) This tax shall be paid by the grantee or transferee of the interest in real estate, as shown on the instrument evidencing the transfer of such interest; and it shall be collected by the register of the county in which the instrument is offered for recordation;

(A) The grantee, the grantee's agent, or a trustee acting for the grantee shall be required to state under oath upon the face of the instrument offered for record in the presence of the register, or before an officer authorized to administer oaths, the actual consideration or value, whichever is greater, for the transfer of a freehold estate;

(B) The making under oath of any false statement known to be false respecting the consideration or value of property transferred shall be punishable as perjury;

(C) A person who obtains several deeds or other instruments of conveyance for the same transfer of one and the same tract or parcel of real estate shall pay only one (1) state tax with respect to such transfer;

(D) The register is forbidden to record the transfer until this tax has been paid; and

(7) No tax is due under this subsection (a) until the title to the property is transferred by deed.

(b) **Mortgages, Deeds of Trust and Other Instruments.** Prior to the public recordation of any instrument evidencing an indebtedness, including, but not limited to, mortgages, deeds of trust, conditional sales contracts, financing statements contemplated by the Uniform Commercial Code, compiled in title 47, and liens on personalty, other than on motor vehicles, there shall be paid a tax, for state purposes only, of eleven and one half cents (11.5¢) on each one hundred dollars (\$100) of the indebtedness so evidenced.

(1) The tax shall not be required for the recordation of judgment liens, contractors' liens, subcontractors' liens, furnishers' liens, laborers' liens, mechanics' and materialmen's liens, financing statements filed pursuant to the Uniform Commercial Code, compiled in title 47, that secure an interest solely in investment property, as defined in § 47-9-102(a), as amended by chapter 846, § 1 of the Acts of 2000, and mortgages or deeds of trust issued under the Home Equity Conversion Mortgage Act, as compiled in title 47, chapter 30, and that are labeled on the face under such chapter.

(2) In any case where the consideration or stipulation of indebtedness does not appear on the face of the instrument being offered for record, the recording official shall require a separate statement, to be made under oath, indicating the amount of the indebtedness so secured.

(3) This tax shall be paid to and collected by county registers, the secretary of state, and any other official who may receive any instrument

other than for liens on motor vehicles in accordance with the motor vehicle title law of this state, for recordation in accordance with the laws of this state, and registration is forbidden until such tax has been paid.

(4) The incidence of the tax provided by this section is declared to be upon the mortgagor, grantor or debtor, evidenced by the instrument offered for recordation. It shall not, however, apply with respect to the first two thousand dollars (\$2,000) of the indebtedness.

(5)(A) As used in this section, “indebtedness” means the principal debt or obligation which is reasonably contemplated by the parties to be included within the terms of the agreement. “Indebtedness” does not include any amount of interest, collection expense including, but not limited to, attorney’s fees and expenses incurred in preserving, protecting, improving, or insuring property which serves as collateral for the indebtedness, or any other amount, other than the principal debt or obligation, for which a debtor becomes liable unless such amount is added to the principal debt or obligation, and is used to calculate additional interest pursuant to refinancing, reamortization, amendment or similar transaction or occurrence.

(B) If the instrument is given to secure the performance by the mortgagor, grantor, debtor or any other person of an obligation other than the payment of a specific sum of money, and a maximum amount secured is not expressed in the instrument, such instrument shall be taxable upon the value of the property covered by the instrument, which value shall be deemed to be the indebtedness secured by such instrument for such purposes. Such instrument shall not be recorded, unless, at the time of presenting the instrument, there is filed a sworn statement by the owner of the property covered thereby of the value of the property. Such amount shall be the basis of assessing the tax imposed under this subsection (b). No subsequent change in the value of the property shall result in the imposition of additional tax.

(C)(i) Every recorded instrument evidencing an indebtedness must contain, either on the face of the instrument or in an attached sworn statement, the following language: “Maximum principal indebtedness for Tennessee recording tax purposes is \$\_\_\_\_\_.” The holder of the indebtedness shall state the amount of the indebtedness, and that amount shall be the basis of assessing the tax imposed by this subsection (b). Such statement may be relied upon only by the department of revenue and by the receiving official charged with the duty of recordation and collection of tax, and such statement shall not constitute notice of any kind to any other party of the amount of indebtedness secured by the instrument.

(ii) Notwithstanding subdivision (b)(5)(C)(i), an instrument described in subdivision (b)(5)(B) shall instead contain, either on the face of the instrument or in an attached sworn statement, the following language: “Secures obligation other than payment of specific sum — valuation statement submitted herewith.”

(iii) Notwithstanding any other law to the contrary, an official charged with the collection of the tax imposed by this subsection (b) shall not record any instrument evidencing an indebtedness, unless it contains the statement required by this subdivision (b)(5)(C) and tax is properly paid, based upon the amount contained in that statement or in

the valuation statement, as appropriate.

(D) When the instrument being offered for registration, recording, or filing secures, or evidences the securing of, a line of credit or other indebtedness arising from more than one (1) advance or extension of credit, the amount of which will, or may, vary from time to time, the tax shall be computed and paid on the maximum amount of the indebtedness as stated in the instrument or the accompanying sworn statement, and the reduction or subsequent increasing of the amount of the indebtedness within such limits shall not result in additional tax.

(6) Imposition of a transfer tax as levied under subsection (a) with respect to an instrument evidencing an indebtedness shall not operate to exonerate such instrument from the tax levied under this subsection (b), if such tax would otherwise be appropriate. Furthermore, an instrument evidencing transfer of any interest in real estate that is subject to the transfer tax shall, nevertheless, be subject to the tax levied under this subsection (b) also, when such instrument evidences an indebtedness either by showing in the instrument that a vendor's lien is retained, or by referring in the instrument to such a lien being evidenced by another instrument not being offered for public recordation.

(7)(A)(i) If some of the property securing the payment of the indebtedness is located in Tennessee and some is located outside of Tennessee, as an optional method of computing the tax, the tax may be apportioned and paid on the basis of the ratio of the value of the Tennessee collateral to the value of all collateral, by applying the following mathematical formula:

$$\frac{\text{value of Tennessee collateral}}{\text{value of total collateral}} = \frac{\text{taxable Tennessee indebtedness}}{\text{total indebtedness}} \times \text{total tax}$$

(ii) If the tax is apportioned pursuant to this subdivision (b)(7), no evidence of the calculation or statement of tax shall be required in addition to the statement required by subdivision (b)(5)(C), which shall be completed with the amount resulting from the calculation made pursuant to subdivision (b)(7)(A)(i).

(B) For purposes of the apportionment calculation allowed in subdivision (b)(7)(A)(i):

(i) "Collateral" means any real property or personal property securing the indebtedness evidenced by the instrument to be filed or recorded;

(ii) "Mobile goods" means goods that are mobile and that are of a type normally used in more than one (1) jurisdiction, such as trailers, rolling stock, airplanes, shipping containers, road building and construction machinery, commercial harvesting machinery and the like;

(iii) "Taxable Tennessee indebtedness" means the amount of indebtedness on which tax is to be calculated as provided in subdivision (b)(4), with the two-thousand-dollar (\$2,000) exemption to be applied to the taxable Tennessee indebtedness;

(iv) "Tennessee collateral" means all collateral in which a security interest, deed of trust, mortgage lien or other consensual lien is perfected by filing or recording one or more instruments in the state of Tennessee or by other methods where the laws of the state of Tennessee govern perfection; provided, however, that the Tennessee collateral of a debtor that is located in Tennessee, as determined pursuant to § 47-9-307, does not include such debtor's interests in:

(a) Any personal property physically located outside the state of Tennessee, including goods, other than mobile goods, and any property that is of a type in which a security interest could be perfected by possession under Tennessee law if such property were located in Tennessee, such as certificated securities, chattel paper, documents, instruments and money; or

(b) Any intangible property and mobile goods, unless such debtor's chief executive office is also located in the state of Tennessee. Any subsequent change in the location of the debtor or any collateral, in the facts supporting the categorization of any particular collateral, or in the relative quantities or values of collateral shall not in itself result in the imposition of additional tax;

(v) "Total collateral" means all collateral, including the Tennessee collateral; and

(vi) "Value" of collateral means the value that the collateral would command at a fair and voluntary sale.

(8) In the event of an increase in the indebtedness beyond the amount stated subsequent to the filing or recordation of the instrument, the holder of the indebtedness shall pay the tax on the amount of the increase. Such a payment shall be due on the date the increase occurs, but may be made without penalty if made within sixty (60) days after the increase occurs. Thereafter, such payment may be made only upon payment of the penalty provided in subdivision (b)(12) based on the amount of the increase in the indebtedness.

(9) Sections 67-4-206 and 67-4-217 shall not apply to the tax imposed by this subsection (b).

(10)(A) Nonpayment or underpayment of tax on an indebtedness, or failure timely to pay tax on an increase in indebtedness, shall not affect or impair the effectiveness, validity, priority, or enforceability of the security interest or lien created or evidenced by the instrument, it being declared the legislative intent that the effectiveness, validity, priority, and enforceability of security interest and liens are governed solely by law applicable to security interests and liens, and not by this title.

(B) Such nonpayment, underpayment, or failure to pay, until cured, shall result in the imposition of a tax lien, in the amount of any tax and penalties unpaid and owing under this subsection (b), in favor of the department of revenue as described in subdivision (b)(11), shall subject the holder of the indebtedness to a penalty as described in subdivision (b)(12), and shall subject the holder of the indebtedness to the disability described in subdivision (b)(13).

(11) The tax lien described in subdivision (b)(10) shall arise at the time the tax is due and shall at that time attach to any property, either real or personal, tangible or intangible, subject to the instrument until:

(A) The lien or security interest of the instrument is released with respect to any property; or

(B) Any property is transferred in settlement or realization of the lien or security interest, whereupon the tax lien shall automatically be released from such property and attach to any proceeds thereof. The department may not levy upon or sell any property subject to the tax lien until notice of the tax lien has been recorded pursuant to § 67-1-1403, but notwithstanding such section, the department otherwise shall not be required to record any notice of the tax lien. The tax lien shall be superior

to all liens and security interest under Tennessee law, except:

- (i) Those enumerated in § 67-1-1403(c)(2)-(4) that were recorded, filed or perfected, respectively, prior to attachment of the tax lien; and
- (ii) County and municipal ad valorem taxes.

(12) It is the duty of every holder of an indebtedness, including an individual, business entity of any organizational structure, or governmental entity, to collect the tax imposed by this subsection (b) from the debtor and to remit the tax as required by this subsection (b). Except as provided in subdivision (b)(8), if the holder of the indebtedness fails to pay or underpays the tax imposed by this subsection (b), the holder of the indebtedness shall be liable for a penalty, in addition to the tax, in the amount of two hundred fifty dollars (\$250) or double the unpaid tax due, whichever is greater.

(13) The holder of an indebtedness evidenced or secured by an instrument upon the recording or filing of which tax is owing under this section may not maintain an action on such indebtedness, other than an action limited to the enforcement of the holder's security interest or lien, against the debtor until such nonpayment is cured. If such an action is commenced and a cure is not effected within a time limit set by the court, the debtor may obtain a dismissal of such action, without prejudice to refile in the event of a subsequent cure of nonpayment. Notwithstanding the terms of the instrument, if a cure is not effected until after the filing of a motion or pleading in which the holder's noncompliance with this subsection (b) is raised, the holder may not thereafter charge the debtor with the costs of curing such noncompliance.

(c) Any oath required in subsections (a) and (b) shall not be introduced as evidence in any proceeding conducted in connection with any condemnation action for the purpose of indicating the value of such real property.

**(d) Reports and Payment of Tax to the Commissioner.**

(1) The county register and other officials charged with the collection of taxes imposed under this section shall report all collections to the department on forms prescribed by the commissioner, in the same manner and under the same conditions as county clerks collect and report revenue under parts 2-6 of this chapter.

(2)(A) For collecting and reporting taxes levied under this section, county registers shall be entitled to retain as commission five percent (5%) of the taxes so collected.

(B) Notwithstanding subdivision (d)(2)(A) or any other law to the contrary, fifty-two percent (52%) of the five percent (5%) commission provided by subdivision (d)(2)(A) shall be remitted to the state treasurer and credited to the general fund of the state.

(3) The county registers shall also be entitled to receive as a fee for issuing each receipt for taxes imposed in this section the sum of one dollar (\$1.00), to be paid when the tax receipt is issued. The fee, however, shall not be applicable nor collectible by any state officials charged with the collection of taxes imposed under this section.

(e) Instruments made pursuant to mergers, consolidations, sales or transfers of substantially all of the assets in this state of corporations, pursuant to plans of reorganization, are exempt from this section.

(f)(1) The recording and rerecording of all transfers of realty in which a municipality is the grantee or transferee and all instruments evidencing an indebtedness in which a municipality is the holder or owner of the indebt-

edness shall be exempt from this section. The recording and rerecording of all instruments evidencing an indebtedness of any health and educational facility corporation formed pursuant to title 48, chapter 101, part 3 shall also be exempt from this section.

(2) For the purposes of this subsection (f), "municipality" means the state of Tennessee or any county or incorporated city or town, utility district, school district, power district, sanitary district, or other municipal, quasi-municipal, or governmental body or political subdivision in this state, and any agency, authority, branch, bureau, commission, corporation, department or instrumentality thereof now or later authorized to be created.

(3) The recording or rerecording of any transfer of realty to or from any municipality and any evidence of indebtedness of or to any municipality, as defined in subsection (a), prior to May 11, 1971, and otherwise validly made, is declared to be valid and effective, notwithstanding any failure to pay the tax formerly imposed by this section, and any such recording or rerecording is ratified, approved and confirmed, and no tax shall be imposed or collected on account of any such recording or rerecording.

**(g) Wetland Acquisition Fund.**

(1) Three and one fourth cents (3.25¢) of the tax levied by subsection (a) shall be credited to a special agency account in the state general fund known as the 1986 wetland acquisition fund; provided, that such funds shall not be obligated or expended to acquire any interest in real property through condemnation or the power of eminent domain. Expenditures from such fund shall only be made to implement and effectuate the purposes of title 11, chapter 14, part 4. The fund may be expended to maintain property purchased pursuant to such part. Funds deposited in such fund shall not revert at the end of any fiscal year, and all interest accruing on investments and deposits of the fund not otherwise expended shall be returned to and made a part of the fund.

(2) Notwithstanding any provision of this section to the contrary, the commissioner of finance and administration, with the written approval of the executive director of the Tennessee wildlife resources agency, is authorized, subject to legislative appropriation, to transfer funds from the 1986 wetland acquisition fund to the Tennessee heritage conservation trust fund, created in title 11, chapter 7, part 1. For the purposes of § 11-7-103(h), "other available sources" also shall not include any funds transferred to the Tennessee heritage conservation trust fund from the 1986 wetland acquisition fund pursuant to this subdivision (g)(2).

**(h) Exception for Certain Facilities.**

(1) With respect to any facility as defined in subdivision (h)(2)(A):

(A) The taxes paid under subsection (a) shall not exceed one hundred thousand dollars (\$100,000) in the aggregate; and

(B) The taxes paid under subsection (b) shall not exceed five hundred thousand dollars (\$500,000) in the aggregate.

(2)(A) As used in this subsection (h), "facility" means any real or personal property that is constructed, acquired or developed for the principal purpose of manufacturing, processing, fabricating or assembling any manufactured products and includes, but is not limited to, all or any part of or any interest in any land and building, including office, administration or other buildings, any improvement to the facilities and all real and personal properties, including, but is not limited to, equipment and machinery deemed necessary in connection with the facility, whether or

not now in existence.

(B) As used in this subsection (h), “related indebtedness” means indebtedness relating to or incurred to finance a portion of or otherwise in connection with a facility, which shall be evidenced by instruments, including, but not limited to, mortgages, deeds of trust, conditional sales contracts, financing statements contemplated by the Uniform Commercial Code, compiled in title 47, and liens on personalty, notwithstanding the fact that portions of such indebtedness may be held by different holders, owners, trustees or other secured parties (holders) of indebtedness or portions of indebtedness relating to the facility.

(3) In order to qualify for the exception provided under this subsection (h), prior to the public recordation of any instrument evidencing a transfer of an interest in realty or of any instrument evidencing a related indebtedness under this section, the grantee or transferee of the interest in such realty or the holder of related indebtedness must submit a sworn statement declaring the amount of tax paid for recording instruments by or on behalf of the person, corporation, or other entity that owns, leases or otherwise operates the facility, referred to in this subsection (h) as the taxpayer, under both subsection (a), with respect to the transfer of realty pertaining to the facility, and subsection (b), with respect to related indebtedness, and a copy of each receipt for the taxes paid for recording such instruments or other evidence of such payments. No tax will be due, if the taxes paid by or on behalf of the taxpayer for recording such instruments pursuant to subsections (a) and (b) relating to the facility and any related indebtedness equal an aggregate amount of one hundred thousand dollars (\$100,000) or five hundred thousand dollars (\$500,000), as the case may be. If less than the aggregate amount of one hundred thousand dollars (\$100,000) or five hundred thousand dollars (\$500,000), as the case may be, in taxes for recording instruments pursuant to subsections (a) and (b) relating to the facility and any related indebtedness has been paid by or on behalf of the taxpayer prior to the proposed recordation of any instrument evidencing a transfer of an interest in realty or related indebtedness, the grantee or transferee of an interest in such realty or the holder of related indebtedness must pay or cause to be paid the amount of tax due, calculated in accordance with this section, which amount shall be no more than the difference between one hundred thousand dollars (\$100,000) or five hundred thousand dollars (\$500,000), and the aggregate amount of such taxes paid by or on behalf of the taxpayer for recording instruments pertaining to the facility and any related indebtedness pursuant to subsections (a) and (b). In no event, however, shall the aggregate amount of taxes paid for recording instruments relating to transfers of an interest in realty under subsection (a) and related indebtedness under subsection (b) exceed one hundred thousand dollars (\$100,000) or five hundred thousand dollars (\$500,000) by or on behalf of the taxpayer.

**(i) Local Parks Land Acquisition Fund.**

(1) One and three fourths cents (1.75¢) of the tax levied by subsection (a) shall be credited to a special agency account in the state general fund known as the local parks land acquisition fund. The moneys in this fund shall be used only for grants to county and municipal governments to implement and carry out the purposes set forth in subdivision (i)(3); provided, that the commissioner of environment and conservation may allocate not more than

three and one-half percent (3.5%) of the moneys in this fund for the administration of the fund. Funds deposited in such fund shall not revert at the end of any fiscal year, and all interest accruing on investments and deposits of the fund not otherwise expended shall be returned to and made a part of the fund.

(2)(A) The commissioner of environment and conservation, the commissioner of agriculture and the director of the wildlife resources agency shall jointly establish priorities for the appropriate allocation of funds, deposited in the local parks land acquisition fund. No project shall receive any such funds unless each such official has approved such expenditure. Such officials shall consider applications from county and municipal governments throughout the state.

(B) At least sixty percent (60%) of the funds allocated annually shall go to municipal governments.

(3) County and municipal governments may use the funds allocated under this section for the purchase of land for parks, natural areas, greenways, and for the purchase of land for recreation facilities. Such funds may also be used for trail development and capital projects in parks, natural areas, and greenways.

(4)(A) Any county or municipal government that receives a grant under this section must match the grant with an equal amount of money for each project. The matching money provided by the local government may be used to purchase additional land or to develop facilities on the land that is purchased with the grant. Rather than providing matching money, the local government may provide as its match a tract of land not previously used for park or recreational purposes that will be dedicated entirely for park or recreational purposes after receipt of the grant and that is independently appraised as having the same, or greater, value as the amount of the state grant.

(B) Rather than providing matching money, the local government may also provide as all or part of its match volunteer services, materials, and equipment that are donated to the local government by a third party at the time the state grant is made, that are used for trail construction or other development on the tract of land for which the state grant is sought, and that are valued in a manner specified by the department.

(5) If an application from a county or municipal government has been submitted for a grant from the local parks land acquisition fund and the county or municipal government subsequently purchases the land or constructs the trail for which the grant was sought before the grant is acted upon, the grant may still be awarded as a reimbursement; provided, that the application was submitted by the local government no more than twelve (12) months prior to the award of the grant.

(6) The commissioner of environment and conservation, the commissioner of agriculture and the director of the wildlife resources agency may promulgate regulations to implement this subsection (i).

(7) No funds deposited in the local parks land acquisition fund from the tax levied by subsection (a) shall be obligated or expended to acquire any interest in real property through condemnation or the power of eminent domain.

**(j) State Lands Acquisition Fund.**

(1) One and one half cents (1.5¢) of the tax levied by subsection (a) shall be credited to a special agency account in the state general fund known as

the state lands acquisition fund. Expenditures from such fund shall be made only to implement and carry out the purposes set forth in subdivision (j)(2). Funds deposited in such fund shall not revert at the end of any fiscal year, and all interest accruing on investments and deposits of the fund not otherwise expended shall be returned to and made a part of the fund.

(2)(A) The commissioner of environment and conservation shall expend the funds which are deposited in the state lands acquisition fund only for the acquisition of land for any area designated as an historic place as evidenced by its inclusion on the National Register of Historic Places, state historic areas or sites, state parks, state forests, state natural areas, boundary areas along state scenic rivers, the state trails system, and for the acquisition of easements to protect any of the foregoing state areas. Such funds may also be used for trail development in the foregoing areas. Such funds may also be used for the redevelopment, renovation and restoration of historic theaters owned by a governmental entity or a not-for-profit corporation or its controlled affiliate and listed on the National Register of Historic Places.

(B) No funds deposited in the state lands acquisition fund from the tax levied by subsection (a) shall be obligated or expended to acquire any interest in real property through condemnation or the power of eminent domain.

(3) The first three hundred thousand dollars (\$300,000) deposited in the state lands acquisition fund shall be transferred and credited to the compensation fund created under § 11-14-406. Following the procedure set forth in that section, the commissioner of finance and administration shall annually reimburse each city and county the amount of lost property tax revenue resulting from any purchase of land by the department of environment and conservation which renders such land tax exempt.

(4) The commissioner of environment and conservation, the commissioner of agriculture and the director of the wildlife resources agency shall jointly establish priorities for the appropriate allocation of funds deposited in the state lands acquisition fund. No project shall receive any such funds unless each such official has approved such expenditure. The commissioner of environment and conservation, the commissioner of agriculture and the director of the wildlife resources agency may promulgate regulations to implement this subsection (j).

(5) Acquisition pursuant to this subsection (j) of property classified under chapter 5, part 10 of this title, shall not constitute a change in the use of the property, and no rollback taxes shall become due solely as a result of such acquisition.

(6) Notwithstanding any provision of this section to the contrary, the commissioner of finance and administration, with the written approval of the commissioner of environment and conservation, is authorized, subject to legislative appropriation, to transfer funds from the state lands acquisition fund to the Tennessee heritage conservation trust fund, created in title 11, chapter 7, part 1. For the purposes of § 11-7-103(h), "other available sources" also shall not include any funds transferred to the Tennessee heritage conservation trust fund from the state lands acquisition fund pursuant to this subdivision (j)(6).

(k) **Revenue Stream.** The moneys deposited in the 1986 wetlands acquisition fund and the moneys deposited in the state lands acquisition fund may

be used as the revenue stream to pay the principal of and interest on revenue bonds that are sold by the state of Tennessee to generate funds to fulfill the purposes for which the moneys deposited in each of these funds may be used.

**(l) Agricultural Resources Conservation Fund.**

(1) One and one half cents (1.5¢) of the tax levied by subsection (a) shall be credited to a special agency account in the state general fund known as the agricultural resources conservation fund. Expenditures from such fund shall be made only to implement and carry out the purposes set forth in subdivision (l)(2). Funds deposited in such fund shall not revert at the end of any fiscal year, and all interest accruing on investments and deposits of the funds not otherwise expended shall be returned to and made a part of the fund.

(2) The commissioner of agriculture shall expend the funds that are deposited in the agricultural resources fund for purposes of landowner assistance, to address point and nonpoint source water quality issues, as well as nuisance problems, including, but not limited to, odor, noise, dust and similar concerns. The commissioner of environment and conservation, commissioner of agriculture and the director of the wildlife resources agency shall jointly establish priorities for the appropriate allocation of funds deposited in the agricultural resources conservation fund. No project shall receive any such funds unless each such official has approved such expenditure. The commissioner of agriculture may promulgate regulations to implement this subsection (l).

(3) Expenditures from the agricultural resources conservation fund shall be made for the promotion and implementation of agricultural management practices that conserve and protect natural resources associated with agricultural production, including, but not limited to, soil, water, air, plants and animals. The commissioner of agriculture may spend up to five percent (5%) of the annual appropriations from this fund on education of landowners, producers and managers concerning conservation and protection practices. No more than ten percent (10%) of the annual appropriation from this fund may be used for management costs associated with technical assistance to accomplish the purposes of the fund and/or the administration of the fund. It is the intent of the general assembly that the highest priority of the agricultural resources conservation fund is to abate and prevent nonpoint source water pollution that may be associated with agricultural production; therefore, the commissioner of agriculture may spend no more than fifteen percent (15%) of the annual appropriations from the fund for the combined purposes of preventing or remedying air, noise, dust, and odor pollution, or similar nuisance type environmental problems associated with agricultural production. The commissioner of agriculture may expend agricultural resources conservation funds as matching dollars to secure additional funding to fulfill the purposes for which the fund was established.

(4) The commissioner of agriculture shall seek advice from the commissioner of environment and conservation in determining the most effective ways to abate nonpoint pollution from agricultural activities.

**(m) Reports of Expenditures.**

(1)(A) By February 1 of every odd-numbered year, the commissioner of environment and conservation shall file with the energy, agriculture and natural resources committee of the senate and the agriculture and natural resources committee of the house of representatives a report detailing expenditures made from the state lands acquisition fund and grants made

to local governments from the local parks land acquisition fund.

(B) By February 1 of every odd-numbered year, the fish and wildlife commission shall file with the energy, agriculture and natural resources committee of the senate and the agriculture and natural resources committee of the house of representatives a report detailing expenditures made from the wetlands acquisition fund.

(C) By February 1 of every odd-numbered year, the commissioner of agriculture shall file with the energy, agriculture and natural resources committee of the senate and the agriculture and natural resources committee of the house of representatives a report detailing expenditures made from the agricultural resources conservation fund.

(2)(A) Once every five (5) years, beginning in 1996, the commissioner of environment and conservation and the fish and wildlife commission shall reevaluate their land acquisition goals and priorities and shall incorporate their findings and conclusions into a written plan. This plan shall be submitted to the energy, agriculture and natural resources committee of the senate and the agriculture and natural resources committee of the house of representatives, which shall conduct public hearings on the plan.

(B) Once every five (5) years, beginning in 2002, the commissioner of agriculture shall reevaluate the progress and accomplishments of the agricultural resources conservation fund and shall incorporate the conclusions and recommendations of such reevaluation into a written plan. This plan shall be submitted to the energy, agriculture and natural resources committee of the senate and the agriculture and natural resources committee of the house of representatives, which shall hold public hearings on the plan.

(n) **Management Policies.** The commissioner of environment and conservation and the fish and wildlife commission shall establish policies for the management of land acquired with funds from the state lands acquisition fund and the wetlands acquisition fund, which policies shall be designed to foster a good relationship with nearby private landowners and to prevent adverse impacts on adjoining property. These policies shall be publicized to nearby private landowners.

**67-4-2113. Where principal business of taxpayer is that of a common carrier of persons or property for hire or of an insurance company — Apportionment of net worth.**

If a taxpayer's principal business in this state is that of a common carrier of persons or property for hire, or of an insurance company, the taxpayer's net worth shall be apportioned to Tennessee on the basis of the following ratios:

(1) **Railroads.** The ratio obtained by taking the arithmetical average of the following two (2) ratios:

(A) The gross receipts from railway operations on business beginning and ending in this state without entering or passing through any other state as compared with its gross receipts from such operations in and outside the state; and

(B) The mileage owned and operated in Tennessee plus mileage leased and operated in Tennessee as compared with the total of such mileage in and outside this state;

(2) **Motor Carriers.** The ratio obtained by taking the arithmetical

average of the following two (2) ratios:

(A) The gross receipts from operations on business beginning and ending inside this state without entering or passing through any other state as compared with its entire gross receipts from such operations in and outside the state; and

(B) The ratio of the total franchise miles or odometer miles, if there are no franchise miles, to which it holds or uses under lease, contract or otherwise, certificates of convenience and necessity from the interstate commerce commission or the department of safety inside the state, to the total franchise, or odometer, miles that it holds or uses under such certificates from the commissions, and like commissions, departments or agencies of other states, in and outside the state, all as shown by the annual reports made by the corporation to the various commissions from which it holds certificates;

(3) **Rail and Motor Carriers.** Where the taxpayer is engaged in transporting passengers and property by both rail and motor, then the ratio of the sum of the miles in the state as computed under subdivisions (1) and (2), to the sum of the miles under the subdivisions in and outside the state;

(4) **Pipelines.** The ratio obtained by taking the arithmetical average of the following two (2) ratios:

(A) The gross receipts from operations on business beginning and ending inside the state without entering or passing through any other state as compared with its entire gross receipts from such operations in and outside the state; and

(B) The ratio of the pipeline miles owned or operated or owned and operated in the state to the miles of pipelines owned or operated or owned and operated in and outside the state;

(5)(A) **Insurance Companies Domiciled in Tennessee.** The ratio of the premiums on policies, persons and property in this state to total premiums;

(B) **Insurance Companies Not Domiciled in Tennessee.** The ratio of premiums on policies, persons and property in this state to total premiums, except that annuity considerations shall be excluded from the numerator and denominator of the ratio;

(6) **Air Carriers.** The ratio obtained by taking the arithmetical average of the following two (2) ratios:

(A) The originating revenue inside the state as compared with the entire originating revenue in and outside the state; and

(B) The ratio of the total air miles flown in the state to the total air miles flown in and outside the state. Air miles flown in the state shall only include miles in the state from flights originating from or ending in the state, or both originating from and ending in the state;

(7) **Air Express Carriers.** The ratio obtained by taking the arithmetical average of the following two (2) ratios:

(A) The originating revenue in the state as compared with the entire originating revenue in and outside the state; and

(B) The ratio of the total air miles flown and ground miles traveled in the state to the total air miles flown and ground miles traveled in and outside the state. Air miles flown in the state shall only include miles in the state from flights originating from or ending in the state, or both originating from and ending in the state. Ground miles traveled in the

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state or traveled in and outside the state shall only include miles traveled with respect to the actual common carriage of persons or property for hire; and

(8) **Barges.** The ratio obtained by taking the arithmetical average of the following two (2) ratios:

(A) The revenue from the transportation of cargo loaded in this state as compared with the entire revenue from the transportation of cargo loaded in and outside the state; and

(B)(i) The ratio of the total miles operated in the state to the total miles operated in and outside the state. Miles operated in the state shall be fifty percent (50%) of the miles operated on the Mississippi River adjacent to the Tennessee shoreline, plus all miles operated on inland waterways within the state;

(ii) "Mile operated" means one (1) mile of movement of each barge.

#### **67-5-508. Records and notice of assessment.**

(a)(1) Prior to May 20 of each year, the assessor shall note upon the assessor's records the current classification and assessed valuation of all taxable property within the assessor's jurisdiction; provided, that, in regard to municipalities, the time requirements of § 67-5-504 shall control.

(2) The assessor shall hold such records open to public inspection, at the assessor's office, during normal business hours; and shall, furthermore, cause to be published at least once in a newspaper of general circulation within the assessor's jurisdiction, a notice when and where such records may be inspected, such notice to be published not later than ten (10) calendar days before the local board of equalization begins its annual session. The notice shall be set forth in the publication within distinct and prominent borders, and shall have a width of not less than two (2) regular columns of such newspaper and a depth of at least four inches (4"). The notice shall state the day upon which the county board of equalization will convene, the last day appeals will be accepted, and a warning that failure to appeal the assessment to the county board of equalization may result in the assessment becoming final without further right of appeal.

(3) In addition, at least ten (10) calendar days before the local board of equalization commences its annual session, the assessor or the assessor's deputy shall notify, or cause to be notified, each taxpayer of any change in the classification or assessed valuation of the taxpayer's property. Such notification shall be sent by United States mail, addressed to the last known address of the taxpayer, and shall be effective when mailed. The notification shall show the previous year's assessment and classification and the current year's assessment and classification.

(4) A notation of the date of any notification of a change in classification or assessed valuation, or a dated copy of such notification, shall be included in the records of the assessor; and such records shall be preserved by the assessor for not less than two (2) years.

(5) For the year in which a reappraisal program is completed and the values so determined are approved by the state division of property assessments to be used as the basis for making assessments in any county, any notice showing the appraised value of property and sent to a property owner by any company, which has been employed for the purpose of conducting

such reappraisal program, shall be in lieu of the notice herein required to be sent by an assessor of property to a taxpayer whose classification or assessed valuation has been changed; provided, that the assessor of property uses the appraised value as set forth on the notice from the company as the basis for the assessor's assessment; and provided further, that the assessor of property does not change the classification of the property from its former classification.

(6) Further, upon a consolidation of the municipal and other assessment offices within any county with the office of the county assessor of property, as provided in § 67-1-513, the county assessor of property shall not be required to notify each taxpayer within such municipality, unless a change has been made by the county assessor of property from the former classification and assessed valuation that existed on the county tax roll for the preceding year; provided, that the assessor of property shall hold the assessor's records open to public inspection at the assessor's office during normal business hours and shall cause to be published at least once, in a newspaper of general circulation within the assessor's jurisdiction, a notice where and when such records may be inspected. Such notice shall be published not later than ten (10) calendar days before the local board of equalization begins its annual session.

(b)(1) Should an assessor fail to complete and note upon the assessor's records the assessment of a taxpayer's property prior to May 20, or should an assessor fail to notify a taxpayer, or the taxpayer's agent, of any change in the classification or assessed valuation of the taxpayer's property, such taxpayer shall have no legal basis for complaint; provided, that the assessment against the property is completed, and a notice of any new or changed classification or assessed valuation is sent by United States mail, to the last known address of the taxpayer, at least ten (10) calendar days before the local board of equalization ends its annual session.

(2) In the event an assessor shall fail to complete any assessment, or notify any taxpayer of a change in the classification or assessed valuation of the taxpayer's property, at least ten (10) calendar days before the local board of equalization ends its annual session, such failure shall not affect, in any way, the validity of such assessment, classification or assessed valuation; but an aggrieved property owner shall have the right to appeal directly to the state board of equalization at its next regular session; and no proceedings shall be undertaken to collect any taxes based upon such assessment, or penalty added, until thirty (30) calendar days after the board shall have rendered a final decision on such appeal or complaint. Upon written request of any party, or upon its own motion, the state board of equalization may remand any such complaint or appeal to the local board of equalization.

(c) As an alternative to notice by mail as provided in this section, notice may be sent by email using the email address provided to the assessor by the taxpayer.

#### **67-5-602. Assessment guided by manuals — Factors for consideration.**

(a) Except as provided in § 67-5-601(c), in determining the value of all property of every kind, the assessor shall be guided by, and follow the instructions of, the appropriate assessment manuals issued by the division of property assessments and approved by the state board of equalization. In the

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preparation of the manual, the division of property assessments and the state board of equalization shall consult with the United States forest service and the state forester in establishing the guidelines to be used in determining the value of forestland.

(b) For determining the value of real property, such manuals shall provide for consideration of the following factors:

- (1) Location;
- (2) Current use;
- (3) Whether income bearing or non-income bearing;
- (4) Zoning restrictions on use;
- (5) Legal restrictions on use;
- (6) Availability of water, electricity, gas, sewers, street lighting, and other municipal services;
- (7) Inundated wetlands;
- (8) Natural productivity of the soil, except that the value of growing crops shall not be added to the value of the land. As used in this subdivision (b)(8), "crops" includes trees; and

(9) All other factors and evidence of value generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.

(c)(1) For determining the value of industrial, commercial, farm machinery and other personal property, such manuals shall provide for consideration of the following factors:

- (A) Current use;
- (B) Depreciated value;
- (C) Actual value after allowance for obsolescence; and
- (D) All other factors and evidence of value generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.

(2) Notwithstanding the foregoing, all farm personal property and also all household and kitchen furniture, tableware, musical instruments, wearing apparel, private passenger motor vehicles, jewelry and other personal property of similar character used in the taxpayer's own household, together with all intangible property, including bank accounts, of the taxpayer, may be assumed prima facie by the assessor of property to be of a value not in excess of seven thousand five hundred dollars (\$7,500) per individual and fifteen thousand dollars (\$15,000) for jointly owned property held by husband and wife in the absence of any tax return or schedule to the contrary.

**67-6-102. Chapter definitions — Definitions applicable for taxation of charges for mobile telecommunications services. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

As used in this chapter, unless the context otherwise requires:

(1) "Advertising agency" means a business, more than eighty percent (80%) of whose gross receipts in the previous taxable year were, or in the first taxable year are reasonably projected to be, from charges for advertising services. For purposes of this definition, "gross receipts" does not include charges for printing, imprinting, reproduction, publishing of tangible personal property or photography to the extent that:

(A) The activity was not performed by the business itself but was contracted out to another business; and

(B) The charges for the activity were passed through the business to its client;

(2) "Advertising materials" means tangible personal property or its digital equivalent produced to advertise a product, service, idea, concept, issue, place or thing, including, but not limited to, brochures, catalogs and point-of-purchase materials, but not including preliminary artwork, and not including original sound recordings or video recordings produced by recording studios, television studios, video production studios or by or for advertising agencies, or masters produced from the original recordings, regardless of whether the original recordings or masters are produced in a tangible medium or a digital equivalent;

(3)(A) "Advertising services" means services rendered by an advertising agency to promote a product, service, idea, concept, issue, place or thing, including services rendered to design and produce advertising materials prior to the acceptance of the advertising materials for reproduction or publication, including, but not limited to:

- (i) Advice and counseling regarding marketing and advertising;
- (ii) Strategic planning for marketing and advertising;
- (iii) Consumer research;
- (iv) Account planning;
- (v) Public relations;
- (vi) Design;
- (vii) Layout;
- (viii) Preparation of preliminary art;
- (ix) Creative consultation, coordination, media placement, direction and supervision;
- (x) Script and copywriting;
- (xi) Editing;
- (xii) Supervision of the production of advertising materials, including quality control;
- (xiii) Direct mail; and
- (xiv) Account management services;

(B) "Advertising services" does not include the production of final artwork or advertising materials;

(4) "Agricultural purposes" means operating tractors or other farm equipment used exclusively, whether for hire or not, in plowing, planting, harvesting, raising or processing of farm products at a farm, nursery or greenhouse, operating farm irrigation systems, or operating motor vehicles or other logging equipment used exclusively, whether for hire or not, in cutting and harvesting trees, when the vehicles or equipment are not operated upon the public highways of this state;

(5) "Aircraft" has the same meaning used in § 42-1-101;

(6) "Alcoholic beverages" means beverages that are suitable for human consumption and contain one half of one percent (0.5%) or more of alcohol by volume;

(7) "Ancillary services" means services that are associated with, or incidental to, the provision of telecommunications services, including, but not limited to, detailed telecommunications billing service, directory assistance service, vertical service, and voice mail service. As used in this

subdivision (7):

(A) "Conference bridging service" means an ancillary service that links two (2) or more participants of an audio or video conference call, and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge;

(B) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement;

(C) "Directory assistance" means an ancillary service of providing telephone number information, and address information;

(D) "Vertical service" means an ancillary service that is offered in connection with one (1) or more telecommunications services, that offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services; and

(E) "Voice mail service" means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service;

(8)(A) "Business" means any activity engaged in by any person, or caused to be engaged in by such person, with the object of gain, benefit, or advantage, either direct or indirect;

(B) "Business" does not include occasional and isolated sales or transactions by a person not regularly engaged in business, or the occasional and isolated sale at retail or use of services sold by or purchased from a person not regularly engaged in business as a vendor of taxable services, or from one who is such a vendor but is not normally a vendor with respect to the services sold or purchased in such occasional or isolated transaction. "Business" does not include those occasional or isolated sales or transactions by such a person involving mobile homes or house trailers, as defined by § 55-4-111, when the consummation of such exclusively involves the assumption by the purchaser of a previously existing finance contract and no other consideration is received by the seller. "Business" does not include any sales or use tax of tangible personal property of any type sold directly to consumers by any person, including, but not limited to, the Girl Scouts or county fairs; provided, however, that the tangible personal property is not regularly sold by the person or is regularly sold by the person only during a temporary sales period that occurs on a semiannual, or less frequent, basis, or, if sold by a volunteer fire department, only during a temporary sales period that occurs no more than four (4) times per calendar year. For charitable entities whose primary purpose is fundraising in support of a city, county or metropolitan library system, "business" does not include sales that the charitable entity elects to make in lieu of two semiannual temporary sales periods; provided, that the sales do not exceed one hundred thousand dollars (\$100,000) per calendar year; and provided further, that the election by the charitable entity shall remain in effect for no less than four (4) years;

(C) "Business" includes occasional and isolated sales or transactions of aircraft, vessels, or motor vehicles between corporations and their members or stockholders and also includes such transactions caused by the

merger, consolidation, or reorganization of corporations. "Business" also includes occasional and isolated sales or transactions of aircraft, vessels, or motor vehicles between partnerships and the partners thereof and transfers between separate partnerships. Transfers caused by the dissolution of a partnership due solely to a partner, in a partnership composed of three (3) or more persons, voluntarily ceasing to be associated in the carrying on of business of the partnership, as provided in § 61-1-128 [repealed], is not included in "business." "Business" shall be construed to include occasional and isolated sales or transactions by such a person involving aircraft, vessels or motor vehicles, which terms include trailers and special motor equipment sold in conjunction therewith, as defined by and required to be registered under the laws of Tennessee with an agency of this state or under the laws of the United States with an agency of the federal government, unless such sales or transactions are otherwise exempt under this chapter or are sales between persons who are married, lineal relatives or spouses of lineal relatives, or siblings. Such sales or transactions involving aircraft based in this state shall be presumed to be made and taxable in this state; and any registration reflecting such aircraft that are so based shall constitute evidence thereof;

(9) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration;

(10) "Certified automated system" means software certified under the Streamlined Sales and Use Tax Agreement (SSUTA) to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction;

(11) "Certified service provider" means an agent certified under the Streamlined Sales and Use Tax Agreement to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases;

(12) "Clothing" means all human wearing apparel suitable for general use;

(13) "Clothing accessories or equipment" means incidental items worn on the person or in conjunction with clothing;

(14) "Coin-operated telephone service" means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate;

(15) "Commissioner" means and includes the commissioner of revenue or the commissioner's duly authorized assistants;

(16) "Common carrier" means every person holding a certificate of public convenience and necessity as a common carrier from the interstate commerce commission or the United States department of transportation or its predecessor agency of the federal government;

(17) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions;

(18) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task;

(19) "Computer software maintenance contract" means a contract that obligates a person to provide a customer with future updates or upgrades to

computer software, support services with respect to computer software, or both. However, "computer software maintenance contract" does not include telephone or other support services that are optional and are sold separately and invoiced separately and do not include any transfer, repair or maintenance of computer software on the part of the seller;

(20) "Construction machinery" means machinery designed for and used exclusively in the preparation for, assembly, fabrication, and finishing of permanent improvements to real estate;

(21) "Cost price" means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever;

(22) "Data center" means a building or buildings, either newly constructed, expanded, or remodeled, housing high-tech computer systems and related equipment;

(23) "Dealer" means every person, as used in this chapter, including Model 1, Model 2, and Model 3 sellers, where the context requires, who:

(A) Manufactures or produces tangible personal property for sale at retail, for use, consumption, distribution, or for storage to be used or consumed in this state;

(B) Imports, or causes to be imported, tangible personal property from any state or foreign country, for sale at retail, for use, consumption, distribution, or for storage to be used or consumed in this state;

(C) Sells at retail, or who offers for sale at retail, or who has in such person's possession for sale at retail, or for use, consumption, distribution, or storage to be used or consumed in this state, tangible personal property as defined in this section;

(D) Has sold at retail, used, consumed, distributed, or stored for use or consumption in this state, tangible personal property and who cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, the consumption, the distribution, or the storage of the tangible personal property;

(E) Leases or rents tangible personal property, as defined in this chapter, for a consideration, permitting the use or possession of the property without transferring title to such property;

(F) Is the lessee or renter of tangible personal property, as defined in this chapter, and who pays to the owner of such property a consideration for the use or possession of such property without acquiring title to such property;

(G) Maintains or has within this state, directly or by a subsidiary, an office, distributing house, sales room or house, warehouse, or other place of business;

(H) Furnishes any of the things or services taxable under this chapter;

(I) Has any representative, agent, salesperson, canvasser or solicitor operating in this state, or any person who serves in such capacity, for the purpose of making sales or the taking of orders for sales, regardless of whether such representative, agent, salesperson, canvasser or solicitor is located here permanently or temporarily, and regardless of whether an established place of business is maintained in this state;

(J) Engages in the regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertis-

ing fliers, or other advertising, or by means of print, radio or television media, by telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system;

(K) Uses tangible personal property, whether the title to such property is in such person or some other entity, and whether or not such other entity is required to pay a sales or use tax, in the performance of such person's contract or to fulfill such person's contract obligations, unless such property has previously been subjected to a sales or use tax, and the tax due thereon has been paid;

(L) Sells at retail or charges admission, dues or fees as defined in this chapter; or

(M) Rents or provides space to a dealer without a permanent location in this state or to dealers who are registered for sales tax at other locations in this state, but who are making sales at this location on a less than permanent basis; provided, that "dealer" does not include flea market operators;

(24) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media;

(25)(A) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services, including, but not limited to, transportation, shipping, postage, handling, crating, and packing. Delivery charges shall not include delivery for direct mail when the charges are separately stated on an invoice or similar billing document given to the purchaser. If the shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using:

(i) A percentage based on the total sales price of the taxable property compared to the sales prices of all property in the shipment; or

(ii) A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment;

(B) The seller shall tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property;

(26) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one (1) or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in subdivisions (26)(A)(i)-(v);

(B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the supplement facts box found on the label and as required pursuant to 21 CFR 101.36;

(27) “Digital audio works” means works that result from the fixation of a series of musical, spoken, or other sounds, that are transferred electronically, including prerecorded or livesongs, music, readings of books or other written materials, speeches, ringtones, or other sound recording. For purposes of this subdivision (27), “ringtones” means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication. “Digital audio works” does not include audio greeting cards sent by electronic mail;

(28) “Digital audio-visual works” means a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, that are transferred electronically. “Digital audio-visual works” includes motion pictures, musical videos, news and entertainment programs, and live events. “Digital audio-visual works” does not include video greeting cards sent by electronic mail or video or electronic games;

(29) “Digital books” means works that are generally recognized in the ordinary and usual sense as “books” that are transferred electronically, including works of fiction and nonfiction and short stories. “Digital books” does not include newspapers, magazines, periodicals, chat room discussions or weblogs;

(30) “Direct mail” means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. “Direct mail” includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. “Direct mail” does not include multiple items of printed material delivered to a single address;

(31) “Direct pay permit” means special written permission granted to a taxpayer by the commissioner to make all purchases free of the sales or use tax and report all sales or use tax due directly to the department;

(32) “Direct pay permit holder” means a taxpayer who holds a direct pay permit;

(33) “Drug” means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

(A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(C) Intended to affect the structure or any function of the body;

(34)(A) “Durable medical equipment” means equipment that:

(i) Can withstand repeated use;

(ii) Is primarily and customarily used to serve a medical purpose;

(iii) Generally is not useful to a person in the absence of illness or injury; and

(iv) Is not worn in or on the body;

(B) “Durable medical equipment” includes repair and replacement parts for the equipment; provided, however, that the repair and replacement parts shall not include parts, components, or attachments that are for single patient use. “Durable medical equipment” does not include

mobility enhancing equipment;

(35) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(36) “Energy resource recovery facility” means a facility for the production of energy in the form of steam or chilled water from the controlled burning of combustible materials, including, but not limited to, coal, fuel oil, or natural gas, where such energy is to be used in a system for heating and cooling five (5) or more separate buildings;

(37) “Fabricating or processing tangible personal property for resale” means only tangible personal property that is fabricated or processed for resale and ultimate use or consumption off the premises of the one engaging in such fabricating or processing, or hot mix asphalt and crushed stone fabricated by a contractor for use by the contractor in highway or road construction projects funded by tax revenues. “Fabricating or processing tangible personal property for resale” shall be deemed to include providing fabrication and repair services to aircraft owned by nonaffiliated business entities whether commercial, governmental or foreign; provided, that the dealer performing such services qualifies for the credit allowed in § 67-4-2109(b). “Fabricating or processing tangible personal property for resale” shall not include any other type of repair services. “Fabricating or processing tangible personal property for resale” includes the processing of photographic film into negatives and/or photographic prints for resale;

(38) “Final artwork” means tangible personal property or its digital equivalent that is suitable for use in producing advertising materials and includes, but is not limited to, photographs, illustrations, drawings, paintings, calligraphy, models and similar works that are used to produce advertising materials, but does not include preliminary artwork or original sound recordings or video recordings produced by recording studios, television studios, video production studios, or by or for advertising agencies, or masters produced from the original recordings regardless of whether the original recordings or masters are produced in a tangible medium or a digital equivalent;

(39) “Flea market” means a place of business that provides space more than two (2) times a year to two (2) or more persons for the purpose of making sales at retail of tangible personal property that, during the usual course of being displayed or offered for sale, is not stored or displayed permanently at that space. “Flea market” does not include hotels, convention centers, municipal auditoriums, municipal coliseums, or gun shows, if such gun shows are sponsored by a not-for-profit corporation;

(40) “Flea market operator” means any person who receives compensation for providing space more than two (2) times a year to two (2) or more persons for the purpose of making sales at retail of tangible personal property that, during the usual course of being displayed or offered for sale, is not stored or displayed permanently at that space. “Flea market operator” does not include a hotel, convention center, municipal auditorium, municipal coliseum, or gun show operator, if such gun shows are sponsored by a not-for-profit corporation;

(41) “Food and food ingredients” means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. “Food and food ingredients” does not include alcoholic

beverages, tobacco, candy, dietary supplements, or prepared food;

(42) "Grooming and hygiene products" are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and screens, regardless of whether the items meet the definition of over-the-counter drugs;

(43) "Gross sales" means the sum total of all retail sales of tangible personal property and all proceeds of services taxable under this chapter as defined in this section, without any deduction whatsoever of any kind or character, except as provided in this chapter;

(44) "Industrial machinery" means:

(A)(i) Machinery, apparatus and equipment with all associated parts, appurtenances and accessories, including hydraulic fluids, lubricating oils, and greases necessary for operation and maintenance, repair parts and any necessary repair or taxable installation labor therefor, that is necessary to, and primarily for, the fabrication or processing of tangible personal property for resale and consumption off the premises, or pollution control facilities primarily used for air pollution control or water pollution control, where the use of such machinery, equipment or facilities is by one who engages in such fabrication or processing as one's principal business or who engages in the fabrication or processing of materials into trusses, window units or door units for resale as part of the principal business of the sale of building supplies either within or without this state, or such use by a county or municipality or a contractor pursuant to a contract with such county or municipality for use in water pollution control or sewage systems, also mining machinery, apparatus equipment and materials, with all associated parts and accessories, including repair parts and any necessary repair or installation labor, that is necessary to and primarily for:

(a) The removal, extraction or detachment of coal from land by surface, underground or other lawful methods of mining and the construction or maintenance of necessary ingress and egress from the mine;

(b) The removal, handling and replacement of overburden and spoils materials; or

(c) The reclamation of mined areas reclaimed under state or federal laws, rules or regulations;

(ii) As used in this chapter, "pollution control facilities" means any system, method, improvement, structure, device or appliance appurtenant thereto used or intended for the primary purpose of eliminating, preventing or reducing air or water pollution, or for the primary purpose of treating, pretreating, recycling or disposing of any hazardous or toxic waste, solid or liquid, when such pollutants are created as a result of fabricating or processing by one who engages in fabricating or processing as such person's principal business activity, which, if released without such treatment, pretreatment, modification or disposal, might be harmful, detrimental or offensive to the public and the public interest;

(B) Machinery that is necessary to and primarily for remanufacturing industrial machinery as defined in subdivision (44)(A) when such utilization is by one whose principal business is that of remanufacturing industrial machinery. For the purposes of this subdivision (44)(B), "remanufacturing" means making new or different products with new or

different functions from the scrap materials used to make them;

(C) Machinery utilized in the pre-press and press operations in the business of printing, including plates and cylinders, and including the component parts and fluids or chemicals necessary for the specific mechanical or chemical actions or operations of such machinery, plates and cylinders, regardless of whether or not the operations occur at the point of retail sales;

(D) Such industrial machinery necessary to and primarily for the fabrication and processing of tangible personal property for resale or used primarily for the control of air pollution or water pollution includes, but is not limited to:

(i) Machines used for generating, producing, and distributing utility services, electricity, steam, and treated or untreated water; and

(ii) Equipment used in transporting raw materials from storage to the manufacturing process, and transporting finished goods from the end of the manufacturing process to storage;

(E)(i) Machinery used to package manufactured items, where the use of such machinery is by a person whose principal business is fabricating or processing tangible personal property for resale. Notwithstanding the principal business of the user, this exemption shall also apply where the use of such machinery at a location is to package automotive aftermarket products manufactured at other locations by the same person or by a corporation affiliated with the manufacturing corporation such that:

(a) Either corporation directly owns or controls one hundred percent (100%) of the capital stock of the other corporation; or

(b) One hundred percent (100%) of the capital stock of both corporations is directly owned or controlled by a common parent;

(ii) To "package," as used in subdivision (44)(E)(i), refers only to the fabrication and/or installation of that packaging that will accompany the product when sold at retail;

(F) Such industrial machinery necessary to and primarily for the fabrication or processing of tangible personal property for resale and consumption off the premises or used primarily for the control of air pollution or water pollution does not include machinery, apparatus and equipment used prior to or after equipment exempted by subdivision (44)(D)(ii), and does not include equipment used for maintenance or the convenience or comfort of workers;

(G) Machinery, apparatus and equipment with all associated parts, appurtenances and accessories, including hydraulic fluids, lubricating oils and greases necessary for operation and maintenance, repair parts and any necessary repair or taxable installation labor therefor, that is necessary to, and primarily for, the fabricating or processing of prescription eyewear, where a majority of such eyewear is ultimately dispensed to patients in states other than Tennessee;

(H)(i) Material handling equipment and racking systems, used by the taxpayer directly and primarily for the storage or handling and movement of tangible personal property in a qualified, new or expanded warehouse or distribution facility, that are purchased beginning one (1) year prior to the start of the construction or expansion and ending one (1) year after the substantial completion of the construction or expansion of the facility, but in no event shall the period exceed three (3) years.

“Qualified, new or expanded warehouse or distribution facility” means a new or expanded facility, that meets the requirements set out in this subdivision (46)(H), for the storage or distribution of finished tangible personal property. Such facilities shall not include a building where tangible personal property is fabricated, processed, assembled or sold over-the-counter to consumers, except for taxpayers that qualify under chapter 185 of the Public Acts of 1995, or are configuring, testing or packaging computer products. “Configuring” computer products means integrating a computer with peripheral computer products, such as a hard disk drive, additional memory or software. A qualifying facility must also be:

(a) A warehouse or distribution facility constructed in this state through an investment in excess of ten million dollars (\$10,000,000) by the taxpayer, and/or a lessor to the taxpayer, over a period not exceeding three (3) years, in a newly constructed and previously unoccupied building and/or equipment for the facility;

(b) An expansion to an existing warehouse or distribution facility, previously qualified under subdivision (44)(H)(i), through an additional investment in excess of ten million dollars (\$10,000,000) by the taxpayer, and/or a lessor to the taxpayer over an additional period not exceeding three (3) years, for additions to the building and the purchase of new equipment for use in the expanded facility;

(c) A warehouse or distribution facility in this state that is purchased and either renovated or expanded through an investment in excess of ten million dollars (\$10,000,000) in such purchase and renovation or expansion by the taxpayer, and/or a lessor to the taxpayer, including the purchase of new equipment for such a building, over a period not exceeding three (3) years; or

(d) An expansion to an existing warehouse or distribution facility in this state through an aggregate investment in excess of twenty million dollars (\$20,000,000) by the taxpayer, and/or a lessor to the taxpayer, over a period not exceeding three (3) years, consisting of an investment in excess of ten million dollars (\$10,000,000) in the renovation or expansion of an existing building and/or the purchase of new equipment for such a building, together with an investment in excess of ten million dollars (\$10,000,000) in the construction of a new, previously unoccupied building and/or equipment for such a building;

(ii) A taxpayer shall qualify for the exemption afforded to material handling and racking systems under subdivision (44)(H)(i) by submitting an application to the commissioner for the exemption, together with a plan describing the investment to be made. The application and plan shall be submitted on forms prescribed by the commissioner. The plan shall demonstrate that the requirements of the law will be met. Upon approval of the exemption request and plan for investment, purchases of the equipment may be made without payment of the sales or use tax. However, if the requisite investment is not made in the time period required, or the terms of the statute are not met, the taxpayer shall be subject to assessment for any tax, penalty or interest that would otherwise have been due;

(I) Material handling equipment and racking systems used in a warehouse and distribution facility, subject to all the requirements and

conditions of subdivision (44)(H), except:

(i) The required investment in excess of ten million dollars (\$10,000,000) may also be made in a previously occupied facility:

(a) Through the purchase of a building, and/or the purchase of new equipment for use in the building no later than one (1) year after the purchase of the building; or

(b) Through the purchase of new equipment for use in a leased building, not qualifying under subdivision (44)(I)(i)(a), made no later than one (1) year after the date of the lease agreement; and

(ii) Any purchases exempted from tax for use in the facility described in this subdivision (44)(I) must be made no later than one (1) year after the purchase of the building under subdivision (44)(I)(i)(a), or no later than one (1) year after the date of the lease agreement under subdivision (44)(I)(i)(b);

(J) "Industrial machinery" does not include machinery, apparatus and equipment, with all associated parts, appurtenances, accessories, repair parts, and necessary repair or taxable installation labor therefor, that is used in the preparation of food for immediate retail sale;

(K) "Industrial machinery" also includes any "computer", "computer network", "computer software", or "computer system", as defined by § 39-14-601, and any peripheral devices, including, but not limited to, hardware such as printers, plotters, external disc drives, modems, and telephone units, when such items are used in the operation of a qualified data center. For purposes of this subdivision (44)(K), "industrial machinery" includes repair parts, repair or installation services, and warranty or service contracts, purchased for such items used in the operation of a qualified data center; and

(L) "Industrial machinery" includes machinery, apparatus and equipment with all associated parts, appurtenances, accessories, repair parts and necessary repair or taxable installation labor therefor, that is necessary to and used primarily for the conversion of tangible personal property into taxable specified digital products for resale and consumption off the premises. "Industrial machinery" does not include machinery, apparatus or equipment, with all associated parts, appurtenances, accessories, repair parts and necessary repair or taxable installation labor therefor, that is used primarily for the storage or distribution of such specified digital products following such conversion;

(45) "International," as used in connection with telecommunications services, means a telecommunications service that originates or terminates in the United States, and terminates or originates outside the United States, respectively. United States includes the District of Columbia and a United States territory or possession;

(46) "Interstate," as used in connection with telecommunications services, means a telecommunications service that originates in one (1) United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession;

(47) "Intrastate," as used in connection with telecommunications services, means a telecommunications service that originates in one (1) United States state or United States territory or possession, and terminates in the same United States state or United States territory or possession;

(48) "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance

of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller, when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser;

(49) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A "lease or rental" may include future options to purchase or extend;

(A) "Lease or rental" does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars (\$100) or one percent (1%) of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision (49), an operator must do more than maintain, inspect, or set-up the tangible personal property;

(B) "Lease or rental" includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(1);

(C) This subdivision (49) shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, compiled in 26 U.S.C., or title 47, chapter 2A, or other federal, state or local law;

(D) This subdivision (49) shall be applied only prospectively from the date of adoption [January 1, 2008] and shall have no retroactive impact on existing leases or rentals;

(50) "Livestock and poultry feed" means and includes all grains, minerals, salts, proteins, fats, fibers and all vitamins, acids and drugs used and mixed with such ingredients as a growth stimulant, disease preventive, to stimulate feed conversion and make a complete feed;

(51) "Local tax jurisdiction" means a geographic area where the same local option tax, either county tax or a combination of county and municipal tax, applies;

(52) "Mobile telecommunications service" means the same as that term is defined in the Mobile Telecommunications Sourcing Act, Public Law 106-252, codified in 4 U.S.C. § 124(7);

(53) "Mobility enhancing equipment" means equipment, including repair and replacement parts to the equipment, but does not include durable medical equipment that:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another and that is appropriate for use either in a home or a motor vehicle;

(B) Is not generally used by persons with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle

normally provided by a motor vehicle manufacturer;

(54) “Model 1 seller” means a seller that has selected a certified service provider as its agent to perform all of the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases;

(55) “Model 2 seller” means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax;

(56) “Model 3 seller” means a seller that has sales in at least five (5) states that are members of the Streamlined Sales and Use Tax Agreement, has total annual sales revenue of at least five hundred million dollars (\$500,000,000), has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this subdivision (56), a seller includes an affiliated group of sellers using the same proprietary system;

(57) “OEM headquarters company” means an original equipment manufacturer that is engaged in the business of manufacturing motor vehicles and qualifies to receive the credit provided in § 67-6-224, or any affiliate thereof. For purposes of this subdivision (57), “affiliate” has the same meaning as provided in § 67-4-2004;

(58) “OEM headquarters company vehicle” means any motor vehicle subject to registration in accordance with title 55 that is owned by an OEM headquarters company, whether used for sales or service training, advertising, quality control, testing, evaluation or such other uses as approved by the commissioner, and, further, including motor vehicles provided by the OEM headquarters company for use by eligible employees and their eligible family members in accordance with policies established by the OEM headquarters company and approved by the commissioner;

(59)(A) “Over-the-counter-drug” means a drug that contains a label that identifies the product as a drug as required by 21 CFR 201.66. The “over-the-counter-drug” label includes:

(i) A drug facts panel; or

(ii) A statement of the active ingredients, with a list of those ingredients contained in the compound, substance or preparation;

(B) “Over-the-counter-drug” does not include grooming and hygiene products;

(60) “Permanent location” does not include any booths or space located at a flea market, antique mall, craft show, antique show, gun show, auto show or any similar type business;

(61) “Person” includes any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, any governmental agency whose services are essentially a private commercial concern, or other group or combination acting as a unit, in the plural as well as the singular number. “Person” further includes any political subdivision or governmental agency, including electric membership corporations or cooperatives, and utility districts, to the extent that such agency sells at retail, rents or furnishes any of the things or services taxable under this chapter;

(62) “Place of primary use” means the street address representative of where the customer’s use of the telecommunications service primarily occurs, which must be the residential street address or the primary business

street address of the customer. In the case of mobile telecommunications service, "place of primary use" shall be within the licensed service area of the home service provider;

(63) "Preliminary artwork" means tangible personal property and digital equivalents that are produced by an advertising agency in the course of providing advertising services solely for the purpose of conveying concepts or ideas or demonstrating an idea or message to a client and includes, but is not limited to concept sketches, illustrations, drawings, paintings, models, photographs, storyboards or similar materials;

(64) "Prepaid calling service" means the right to access exclusively telecommunications services that must be paid for in advance and that enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(65) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service, as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services that must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount;

(66)(A) "Prepared food" means:

- (i) Food sold in a heated state or heated by the seller;
- (ii) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or
- (iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food;

(B) "Prepared food" in subdivision (66)(A)(ii) does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration (FDA) in chapter 3, § 401.11 of the FDA's food code so as to prevent food borne illnesses;

(67) "Prescription" means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state;

(68) "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two (2) or more prewritten computer software programs or prewritten portions of computer software does not cause the combination to be other than prewritten computer software. "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of that person's modifications or enhancements. "Prewritten computer software" or a prewritten portion of the computer software that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; provided, however, that

where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software;

(69) "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels;

(70)(A) "Prosthetic device" means a replacement, corrective, or supportive device including repair and replacement parts for the replacement, corrective, or supportive device worn on or in the body to:

- (i) Artificially replace a missing portion of the body;
- (ii) Prevent or correct physical deformity or malfunction; or
- (iii) Support a weak or deformed portion of the body;

(B) "Prosthetic device" does not include:

- (i) Corrective eyeglasses; or
- (ii) Contact lenses;

(71) "Protective equipment" means items for human wear, designed as protection of the wearer against injury or disease or as protection against damage or injury of other persons or property, but not suitable for general use;

(72) "Purchase price" applies to the measure subject to use tax and has the same meaning as sales price;

(73) "Qualified data center" means a data center that has made a required capital investment in excess of two hundred fifty million dollars (\$250,000,000) during an investment period not to exceed three (3) years and that creates at least twenty-five (25) net new full-time employee jobs during the investment period paying at least one hundred fifty percent (150%) of the states' average occupational wage as defined in § 67-4-2004. For purposes of this subdivision (73), "required capital investment" means an increase of a business investment in real property, tangible personal property or computer software owned or leased in the state, valued in accordance with generally accepted accounting principles. A capital investment shall be deemed to have been made as of the date of payment or the date the taxpayer enters into a legally binding commitment or contract for purchase or construction. For purposes of this subdivision (73), "full-time employee job" means a permanent, rather than seasonal or part-time employment position for at least twelve (12) consecutive months to a person for at least thirty-seven and one half (37 ½) hours per week with minimum health care, as described in title 56, chapter 7, part 22. The three-year period for making the required capital investment provided for in this subdivision (73) may be extended by the commissioner of economic and community development for a reasonable period, not to exceed four (4) years, for good cause shown. For purposes of this subdivision (73), "good cause" means a determination by the commissioner of economic and community development that the capital investment is a result of the exemption for industrial machinery used by a qualified data center;

(74) "Rain check" means the seller allows a customer to purchase an item at a certain price at a later time, because the particular item was out of

stock;

(75)(A) "Resale" means a subsequent, bona fide sale of the property, services, or taxable item by the purchaser. "Sale for resale" means the sale of the property, services, or taxable item intended for subsequent resale by the purchaser. Any sales for resale shall, however, be in strict compliance with rules and regulations promulgated by the commissioner;

(B)(i) "Sale for resale" does not include a sale of tangible personal property or software to a dealer for use in the business of selling services. Property used in the business of selling services includes, but is not limited to, property that is regularly furnished to purchasers of the service without separate charge. A dealer that sells services shall be considered the end user and consumer of property used in selling, performing, or furnishing such services. However, "sale for resale" does include the following items in the circumstances described:

(a) Repair parts or other property sold to a dealer if such property is subsequently transferred to the customer in conjunction with the dealer's performance of repair services, regardless of whether the dealer makes a separately stated charge for such property;

(b) Installation parts or other property sold to a dealer if such property is subsequently transferred to the customer in conjunction with the installation of property that remains tangible personal property following such installation, regardless of whether the dealer makes a separately stated charge for such property;

(c) Mobile telephones and similar devices sold to a dealer if such property is subsequently transferred to the customer in conjunction with the sale of commercial mobile radio services (CMRS), regardless of whether the dealer makes a separately stated charge for such property; and

(d) Food or beverages sold to a hotel, motel, inn or other dealer that provides lodging accommodations if such food or beverages are subsequently transferred to the customer in conjunction with the dealer's sale of lodging accommodations to the customer, regardless of whether the dealer makes a separately stated charge for such property;

(ii) "Sale for resale" does not include a sale of services to a dealer for use in the business of selling, leasing, or renting tangible personal property or computer software. Services used in the business of selling, leasing, or renting tangible personal property include, but are not limited to, services such as cleaning, maintaining, or repairing property that is held as inventory for sale, lease, or rental. A dealer that sells, leases, or rents tangible personal property or computer software shall be considered the end user and consumer of services used in conducting such business;

(iii) Nothing in this subdivision (75) shall be construed as amending or otherwise effecting the exemption provided in § 67-6-392;

(76) "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent;

(77) "Retailer" means and includes every person engaged in the business of making sales at retail, or for distribution, use, consumption, storage to be used or consumed in this state or furnishing any of the things or services taxable under this chapter;

(78)(A) "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any

means whatsoever of tangible personal property for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work, and the furnishing, repairing or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing or serving such tangible personal property;

(B) A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale; provided, that where title to property is taken by an industrial development corporation, within the meaning of title 7, chapter 53, but the property is leased to a taxpayer, the transaction shall be regarded, for purposes of this chapter, as a sale to and purchase by the industrial development corporation followed by a lease, regardless of whether the lessee has an option to purchase any or all of the property from the industrial development corporation;

(C) "Sale" includes the furnishing of any of the things or services taxable under this chapter;

(D) "Sale" includes the sale, gifts in connection with valuable contributions, exchange or other disposition of admission, dues or fees to membership sports and recreation clubs, places of amusement or recreational or athletic events or for the privilege of having access to or the use of amusement, recreational, athletic or entertainment facilities. Such establishments or facilities include, but are not limited to, the amusement and recreational facilities and motion picture theaters described in the standard industrial classification index prepared by the bureau of the budget of the federal government;

(E) "Sale" includes the renting or providing of space to a dealer or vendor without a permanent location in this state or to persons who are registered for sales tax at other locations in this state but who are making sales at this location on a less than permanent basis;

(F) "Sale" includes the processing of photographic film into negatives and/or photographic prints for resale;

(G) "Sale" includes charges for admission, dues or fees that constitute a sale under this subdivision (78), except tickets for admission sold to a Tennessee dealer for resale upon presentation of a resale certificate. Dealers registered with the state for sales tax purposes may purchase tickets for resale without payment of tax upon presentation to the vendor of a valid certificate of resale;

(H) "Sale" includes all transactions that the commissioner, upon investigation, finds to be in lieu of sales;

(I) "Sale" includes a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(J) "Sale" includes a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100) or one percent (1%) of the total required payments; and

(K) "Sale" includes any transfer of title or possession, or both, lease or licensing, in any manner or by any means whatsoever of computer software for consideration, and includes the creation of computer software on the premises of the consumer and any programming, transferring or

loading of computer software into a computer;

(79)(A) "Sales price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (i) The seller's cost of the property sold;
  - (ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
  - (iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
  - (iv) Delivery charges;
  - (v) Installation charges; and
  - (vi) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise;
- (B) "Sales price" does not include:

- (i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
- (ii) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser;
- (iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser; and
- (iv) Credit for any trade-in, as determined by § 67-6-510, that is separately stated on an invoice or similar billing document given to the purchaser;

(C) "Sales price" includes consideration received by the seller from third parties, if:

- (i) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale;
- (ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;
- (iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
- (iv) One of the following criteria is met:
  - (a) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount, where the coupon, certificate or documentation is authorized, distributed or granted by a third party, with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;
  - (b) The purchaser identifies itself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not

constitute membership in such a group; or

(c) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser, or on a coupon, certificate or other documentation presented by the purchaser;

(80) "School art supplies" means an item commonly used by a student in a course of study for artwork. For purposes of this chapter, the following is an all-inclusive list of "school art supplies":

- (A) Clay and glazes;
- (B) Paintbrushes for artwork;
- (C) Paints, acrylic, tempera, and oil;
- (D) Sketch and drawing pads; and
- (E) Watercolors;

(81) "School computer supplies" means an item commonly used by a student in a course of study in which a computer is used. For purposes of this chapter, the following is an all-inclusive list of "school computer supplies":

- (A) Computer printers;
- (B) Computer storage media, diskettes, compact disks;
- (C) Handheld electronic schedulers, except devices that are cellular phones;
- (D) Personal digital assistants, except devices that are cellular phones; and
- (E) Printer supplies for computers, printer paper, printer ink;

(82) "School instructional materials" means written material commonly used by a student in a course of study as a reference and to learn the subject being taught. For purposes of this chapter, the following is an all-inclusive list of "school instructional materials":

- (A) Reference books;
- (B) Reference maps and globes;
- (C) Textbooks; and
- (D) Workbooks;

(83) "School supplies" means an item used by a student in a course of study. For purposes of this chapter, the following is an all-inclusive list of "school supplies":

- (A) Binders;
- (B) Blackboard chalk;
- (C) Book bags;
- (D) Calculators;
- (E) Cellophane tape;
- (F) Compasses;
- (G) Composition books;
- (H) Crayons;
- (I) Erasers;
- (J) Folders, expandable, pocket, plastic and manila;
- (K) Glue, paste, and paste sticks;
- (L) Highlighters;
- (M) Index cards;
- (N) Index card boxes;
- (O) Legal pads;
- (P) Lunch boxes;
- (Q) Markers;

(R) Notebooks;

(S) Paper, loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper;

(T) Pencil boxes and other school supply boxes;

(U) Pencil sharpeners;

(V) Pencils;

(W) Pens;

(X) Protractors;

(Y) Rulers;

(Z) Scissors; and

(AA) Writing tablets;

(84) "Service address" means the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid. In the event this may not be known, service address means the origination point of the signal of the telecommunication service first identified by either the seller's telecommunication system or in information received by the seller from its service provider, where the system used to transport the signal is not that of the seller. In the event that neither the location of the telecommunications equipment nor the origination point of the signal are known, service address means the location of the customer's place of primary use;

(85) "Software" means computer software;

(86) "Specified digital products" means electronically transferred digital audio-visual works, digital audio works and digital books. For purposes of this subdivision (86), "electronically transferred" means obtained by the purchaser by means other than tangible storage media;

(87) "Sport or recreational equipment" means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use;

(88) "Storage" means and includes any keeping or retention in this state of tangible personal property for use or consumption in this state, or for any purpose other than sale at retail in the regular course of business; provided, that temporary storage pending shipping or mailing of tangible personal property to nonresidents of Tennessee shall not constitute a taxable use in Tennessee;

(89)(A) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software;

(B) "Tangible personal property" does not include signals broadcast over the airwaves;

(90)(A) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing, without regard to whether such service is referred to as voice over Internet protocol services or is classified by the federal communications

commission as enhanced or value added;

(B) "Telecommunications service" does not include:

(i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by electronic transmission to a purchaser, where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(ii) Installation or maintenance of wiring or equipment on a customer's premises;

(iii) Tangible personal property;

(iv) Advertising including, but not limited to, directory advertising;

(v) Billing and collection services provided to third parties;

(vi) Internet access service;

(vii) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service, as defined in 47 U.S.C. § 522(6), and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;

(viii) Ancillary services; or

(ix) Digital products delivered electronically, including, but not limited to, computer software, music, video, reading materials or ringtones;

(91) "Textbook" means a printed book that contains systematically organized educational information that covers the primary objectives of a course of study. A textbook may contain stories and excerpts of popular fiction and nonfiction writings, but does not include a book primarily published and distributed for sale to the general public. The term "textbook" does not include a computer or computer software;

(92) "Time-share estate" means an ownership or leasehold estate in property devoted to a time-share fee, tenants in common, time span ownership, interval ownership, and a time-share lease;

(93) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco;

(94)(A) "Use" means and includes the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business;

(B) "Use" means the coming to rest in Tennessee of catalogues, advertising fliers, or other advertising publications distributed to residents of Tennessee in interstate commerce; provided, that the labeling, temporary storage, and other handling in connection with mailing or shipping of the catalogues, advertising fliers and other advertising publications in interstate commerce to nonresidents of Tennessee shall not constitute a taxable use in Tennessee; and

(C) "Use" also means and includes the consumption of any of the services and amusements taxable under this chapter;

(95) "Use tax" includes the "use," "consumption," "distribution" and "storage" as defined in this section;

(96)(A) "Video programming services" means programming provided by or generally considered comparable to programming provided by a television

broadcast station and shall include cable television services sold by a provider authorized pursuant to title 7, chapter 59, wireless cable television services (multipoint distribution service/multichannel multipoint distribution service) and video services provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including Internet protocol technology;

(B) "Video programming services" does not include any of the following:

(i) Digital products transferred electronically, including, but not limited to, software, ringtones, and reading materials such as books, magazines, and newspapers;

(ii) Audio and video programming services provided by a commercial mobile service provider as defined in 47 U.S.C. § 332(d);

(iii) Audio and video programming services provided as part of, or incidental to, Internet access service, such as, but not limited to, video capable email; provided, that the services are not generally considered comparable to programming provided by a television broadcast station; and

(iv) Direct-to-home satellite television programming services; and

(97) "Workbook" means a printed booklet that contains problems and exercises in which a student may directly write answers or responses to the problems and exercises. The term "workbook" does not include a computer or computer software.

**67-6-102. Chapter definitions — Definitions applicable for taxation of charges for mobile telecommunications services. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

*As used in this chapter, unless the context otherwise requires:*

(1) "Advertising agency" means a business, more than eighty percent (80%) of whose gross receipts in the previous taxable year were, or in the first taxable year are reasonably projected to be, from charges for advertising services. For purposes of this definition, "gross receipts" does not include charges for printing, imprinting, reproduction, publishing of tangible personal property or photography to the extent that:

(A) The activity was not performed by the business itself but was contracted out to another business; and

(B) The charges for the activity were passed through the business to its client;

(2) "Advertising materials" means tangible personal property or its digital equivalent produced to advertise a product, service, idea, concept, issue, place or thing, including, but not limited to, brochures, catalogs and point-of-purchase materials, but not including preliminary artwork, and not including original sound recordings or video recordings produced by recording studios, television studios, video production studios or by or for advertising agencies, or masters produced from the original recordings, regardless of whether the original recordings or masters are produced in a tangible medium or a digital equivalent;

(3)(A) "Advertising services" means services rendered by an advertising agency to promote a product, service, idea, concept, issue, place or thing, including services rendered to design and produce advertising materials prior to the acceptance of the advertising materials for reproduction or

*publication, including, but not limited to:*

- (i) Advice and counseling regarding marketing and advertising;*
- (ii) Strategic planning for marketing and advertising;*
- (iii) Consumer research;*
- (iv) Account planning;*
- (v) Public relations;*
- (vi) Design;*
- (vii) Layout;*
- (viii) Preparation of preliminary art;*
- (ix) Creative consultation, coordination, media placement, direction and supervision;*
- (x) Script and copywriting;*
- (xi) Editing;*
- (xii) Supervision of the production of advertising materials, including quality control;*
- (xiii) Direct mail; and*
- (xiv) Account management services;*

*(B) "Advertising services" does not include the production of final artwork or advertising materials;*

*(4) "Agricultural purposes" means operating tractors or other farm equipment used exclusively, whether for hire or not, in plowing, planting, harvesting, raising or processing of farm products at a farm, nursery or greenhouse, operating farm irrigation systems, or operating motor vehicles or other logging equipment used exclusively, whether for hire or not, in cutting and harvesting trees, when the vehicles or equipment are not operated upon the public highways of this state;*

*(5) "Aircraft" has the same meaning used in § 42-1-101;*

*(6) "Alcoholic beverages" means beverages that are suitable for human consumption and contain one half of one percent (0.5%) or more of alcohol by volume;*

*(7) "Ancillary services" means services that are associated with, or incidental to, the provision of telecommunications services, including, but not limited to, detailed telecommunications billing service, directory assistance service, vertical service, and voice mail service. As used in this subdivision (7):*

*(A) "Conference bridging service" means an ancillary service that links two (2) or more participants of an audio or video conference call, and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge;*

*(B) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement;*

*(C) "Directory assistance" means an ancillary service of providing telephone number information, and address information;*

*(D) "Vertical service" means an ancillary service that is offered in connection with one (1) or more telecommunications services, that offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services; and*

(E) “Voice mail service” means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service;

(8)(A) “Bundled transaction” means the retail sale of two (2) or more products, except real property and services to real property where:

- (i) The products are otherwise distinct and identifiable; and
- (ii) The products are sold for one (1) non-itemized price;

(B) A “bundled transaction” does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction;

(C) “Distinct and identifiable products” does not include:

(i) Packaging, such as containers, boxes, sacks, bags, and bottles, or other materials, such as wrapping, labels, tags, and instruction guides, that accompany the retail sale of the products and are incidental or immaterial to the retail sale of the products. Examples of packaging that is incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags and express delivery envelopes and boxes;

(ii) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge;

(iii) Items included in the definition of sales price, pursuant to subdivision (81);

(D) “One non-itemized price” does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form, including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list;

(E) A transaction that otherwise meets the definition of a bundled transaction is not a bundled transaction if it is:

(i) The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;

(ii) The retail sale of services where one (1) service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service;

(iii) A transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis;

(a) “De minimis” means the seller’s purchase price or sales price of the taxable products is ten percent (10%) or less of the total purchase price or sales price of the bundled products;

(b) Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis; and

(c) Sellers shall use the full term of a service contract to determine

*if the taxable products are de minimis; or*

*(iv)(a) The retail sale of exempt tangible personal property and taxable tangible personal property, where:*

*(1) The transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices or medical supplies; and*

*(2) The seller's purchase price or sales price of the taxable tangible personal property is fifty percent (50%) or less of the total purchase price or sales price of the bundled tangible personal property;*

*(b) Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent (50%) determination for a transaction;*

*(9)(A) "Business" means any activity engaged in by any person, or caused to be engaged in by such person, with the object of gain, benefit, or advantage, either direct or indirect;*

*(B) "Business" does not include occasional and isolated sales or transactions by a person not regularly engaged in business, or the occasional and isolated sale at retail or use of services sold by or purchased from a person not regularly engaged in business as a vendor of taxable services, or from one who is such a vendor but is not normally a vendor with respect to the services sold or purchased in such occasional or isolated transaction. "Business" does not include those occasional or isolated sales or transactions by such a person involving mobile homes or house trailers, as defined by § 55-4-111, when the consummation of such exclusively involves the assumption by the purchaser of a previously existing finance contract and no other consideration is received by the seller. "Business" does not include any sales or use tax of tangible personal property of any type sold directly to consumers by any person, including, but not limited to, the Girl Scouts or county fairs; provided, however, that the tangible personal property is not regularly sold by the person or is regularly sold by the person only during a temporary sales period that occurs on a semiannual, or less frequent, basis, or, if sold by a volunteer fire department, only during a temporary sales period that occurs no more than four (4) times per calendar year. For charitable entities whose primary purpose is fundraising in support of a city, county or metropolitan library system, "business" does not include sales that the charitable entity elects to make in lieu of two semiannual temporary sales periods; provided, that the sales do not exceed one hundred thousand dollars (\$100,000) per calendar year; and provided further, that the election by the charitable entity shall remain in effect for no less than four (4) years;*

*(C) "Business" includes occasional and isolated sales or transactions of aircraft, vessels, or motor vehicles between corporations and their members or stockholders and also includes such transactions caused by the merger, consolidation, or reorganization of corporations. "Business" also includes occasional and isolated sales or transactions of aircraft, vessels, or motor vehicles between partnerships and the partners thereof and transfers between separate partnerships. Transfers caused by the dissolution of a partnership due solely to a partner, in a partnership composed of three (3) or more persons, voluntarily ceasing to be associated in the carrying on of business of the partnership, as provided in § 61-1-128 [repealed], is not*

*included in “business.” “Business” shall be construed to include occasional and isolated sales or transactions by such a person involving aircraft, vessels or motor vehicles, which terms include trailers and special motor equipment sold in conjunction therewith, as defined by and required to be registered under the laws of Tennessee with an agency of this state or under the laws of the United States with an agency of the federal government, unless such sales or transactions are otherwise exempt under this chapter or are sales between persons who are married, lineal relatives or spouses of lineal relatives, or siblings. Such sales or transactions involving aircraft based in this state shall be presumed to be made and taxable in this state; and any registration reflecting such aircraft that are so based shall constitute evidence thereof;*

*(10) “Candy” means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration;*

*(11) “Certified automated system” means software certified under the Streamlined Sales and Use Tax Agreement (SSUTA) to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction;*

*(12) “Certified service provider” means an agent certified under the Streamlined Sales and Use Tax Agreement to perform all of the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases;*

*(13) “Clothing” means all human wearing apparel suitable for general use;*

*(14) “Clothing accessories or equipment” means incidental items worn on the person or in conjunction with clothing;*

*(15) “Coin-operated telephone service” means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate;*

*(16) “Commercial air carrier” means an entity authorized and certificated by the United States department of transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce;*

*(17) “Commissioner” means and includes the commissioner of revenue or the commissioner’s duly authorized assistants;*

*(18) “Common carrier” means every person holding a certificate of public convenience and necessity as a common carrier from the interstate commerce commission or the United States department of transportation or its predecessor agency of the federal government;*

*(19) “Computer” means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions;*

*(20) “Computer software” means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task;*

*(21) “Computer software maintenance contract” means a contract that obligates a person to provide a customer with future updates or upgrades to computer software, support services with respect to computer software, or both. However, “computer software maintenance contract” does not include telephone or other support services that are optional and are sold separately and invoiced separately and do not include any transfer, repair or mainte-*

nance of computer software on the part of the seller;

(22) “Construction machinery” means machinery designed for and used exclusively in the preparation for, assembly, fabrication, and finishing of permanent improvements to real estate;

(23) “Cost price” means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever;

(24) “Data center” means a building or buildings, either newly constructed, expanded, or remodeled, housing high-tech computer systems and related equipment;

(25) “Dealer” means every person, as used in this chapter, including Model 1, Model 2, and Model 3 sellers, where the context requires, who:

(A) Manufactures or produces tangible personal property for sale at retail, for use, consumption, distribution, or for storage to be used or consumed in this state;

(B) Imports, or causes to be imported, tangible personal property from any state or foreign country, for sale at retail, for use, consumption, distribution, or for storage to be used or consumed in this state;

(C) Sells at retail, or who offers for sale at retail, or who has in such person’s possession for sale at retail, or for use, consumption, distribution, or storage to be used or consumed in this state, tangible personal property as defined in this section;

(D) Has sold at retail, used, consumed, distributed, or stored for use or consumption in this state, tangible personal property and who cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, the consumption, the distribution, or the storage of the tangible personal property;

(E) Leases or rents tangible personal property, as defined in this chapter, for a consideration, permitting the use or possession of the property without transferring title to such property;

(F) Is the lessee or renter of tangible personal property, as defined in this chapter, and who pays to the owner of such property a consideration for the use or possession of such property without acquiring title to such property;

(G) Maintains or has within this state, directly or by a subsidiary, an office, distributing house, sales room or house, warehouse, or other place of business;

(H) Furnishes any of the things or services taxable under this chapter;

(I) Has any representative, agent, salesperson, canvasser or solicitor operating in this state, or any person who serves in such capacity, for the purpose of making sales or the taking of orders for sales, regardless of whether such representative, agent, salesperson, canvasser or solicitor is located here permanently or temporarily, and regardless of whether an established place of business is maintained in this state;

(J) Engages in the regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system;

(K) Uses tangible personal property, whether the title to such property is in such person or some other entity, and whether or not such other entity is

*required to pay a sales or use tax, in the performance of such person's contract or to fulfill such person's contract obligations, unless such property has previously been subjected to a sales or use tax, and the tax due thereon has been paid;*

*(L) Sells at retail or charges admission, dues or fees as defined in this chapter; or*

*(M) Rents or provides space to a dealer without a permanent location in this state or to dealers who are registered for sales tax at other locations in this state, but who are making sales at this location on a less than permanent basis; provided, that "dealer" does not include flea market operators;*

*(26) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media;*

*(27)(A) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services, including, but not limited to, transportation, shipping, postage, handling, crating, and packing. Delivery charges shall not include delivery for direct mail when the charges are separately stated on an invoice or similar billing document given to the purchaser. If the shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using:*

*(i) A percentage based on the total sales price of the taxable property compared to the sales prices of all property in the shipment; or*

*(ii) A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment;*

*(B) The seller shall tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property;*

*(28) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:*

*(A) Contains one (1) or more of the following dietary ingredients:*

*(i) A vitamin;*

*(ii) A mineral;*

*(iii) An herb or other botanical;*

*(iv) An amino acid;*

*(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or*

*(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in subdivisions (28)(A)(i)-(v);*

*(B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and*

*(C) Is required to be labeled as a dietary supplement, identifiable by the supplement facts box found on the label and as required pursuant to 21 CFR 101.36;*

*(29) "Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds, that are transferred electronically, including prerecorded or livesongs, music, readings of books or other written materials, speeches, ringtones, or other sound recording. For purposes of this subdivision (29), "ringtones" means digitized sound files that are downloaded*

onto a device and that may be used to alert the customer with respect to a communication. "Digital audio works" does not include audio greeting cards sent by electronic mail;

(30) "Digital audio-visual works" means a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, that are transferred electronically. "Digital audio-visual works" includes motion pictures, musical videos, news and entertainment programs, and live events. "Digital audio-visual works" does not include video greeting cards sent by electronic mail or video or electronic games;

(31) "Digital books" means works that are generally recognized in the ordinary and usual sense as "books" that are transferred electronically, including works of fiction and nonfiction and short stories. "Digital books" does not include newspapers, magazines, periodicals, chat room discussions or weblogs;

(32) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address;

(33) "Direct pay permit" means special written permission granted to a taxpayer by the commissioner to make all purchases free of the sales or use tax and report all sales or use tax due directly to the department;

(34) "Direct pay permit holder" means a taxpayer who holds a direct pay permit;

(35) "Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

(A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(C) Intended to affect the structure or any function of the body;

(36)(A) "Durable medical equipment" means equipment that:

(i) Can withstand repeated use;

(ii) Is primarily and customarily used to serve a medical purpose;

(iii) Generally is not useful to a person in the absence of illness or injury; and

(iv) Is not worn in or on the body;

(B) "Durable medical equipment" includes repair and replacement parts for the equipment; provided, however, that the repair and replacement parts shall not include parts, components, or attachments that are for single patient use. "Durable medical equipment" does not include mobility enhancing equipment;

(37) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(38) "Energy resource recovery facility" means a facility for the production of energy in the form of steam or chilled water from the controlled burning of

*combustible materials, including, but not limited to, coal, fuel oil, or natural gas, where such energy is to be used in a system for heating and cooling five (5) or more separate buildings;*

(39) *“Fabricating or processing tangible personal property for resale” means only tangible personal property that is fabricated or processed for resale and ultimate use or consumption off the premises of the one engaging in such fabricating or processing, or hot mix asphalt and crushed stone fabricated by a contractor for use by the contractor in highway or road construction projects funded by tax revenues. “Fabricating or processing tangible personal property for resale” shall be deemed to include providing fabrication and repair services to aircraft owned by nonaffiliated business entities whether commercial, governmental or foreign; provided, that the dealer performing such services qualifies for the credit allowed in § 67-4-2109(b). “Fabricating or processing tangible personal property for resale” shall not include any other type of repair services. “Fabricating or processing tangible personal property for resale” includes the processing of photographic film into negatives and/or photographic prints for resale;*

(40) *“Final artwork” means tangible personal property or its digital equivalent that is suitable for use in producing advertising materials and includes, but is not limited to, photographs, illustrations, drawings, paintings, calligraphy, models and similar works that are used to produce advertising materials, but does not include preliminary artwork or original sound recordings or video recordings produced by recording studios, television studios, video production studios, or by or for advertising agencies, or masters produced from the original recordings regardless of whether the original recordings or masters are produced in a tangible medium or a digital equivalent;*

(41) *“Flea market” means a place of business that provides space more than two (2) times a year to two (2) or more persons for the purpose of making sales at retail of tangible personal property that, during the usual course of being displayed or offered for sale, is not stored or displayed permanently at that space. “Flea market” does not include hotels, convention centers, municipal auditoriums, municipal coliseums, or gun shows, if such gun shows are sponsored by a not-for-profit corporation;*

(42) *“Flea market operator” means any person who receives compensation for providing space more than two (2) times a year to two (2) or more persons for the purpose of making sales at retail of tangible personal property that, during the usual course of being displayed or offered for sale, is not stored or displayed permanently at that space. “Flea market operator” does not include a hotel, convention center, municipal auditorium, municipal coliseum, or gun show operator, if such gun shows are sponsored by a not-for-profit corporation;*

(43) *“Food and food ingredients” means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. “Food and food ingredients” does not include alcoholic beverages, tobacco, candy, dietary supplements, or prepared food;*

(44) *“Grooming and hygiene products” are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and screens, regardless of whether the items meet the definition of over-the-counter drugs;*

(45) “Gross sales” means the sum total of all retail sales of tangible personal property and all proceeds of services taxable under this chapter as defined in this section, without any deduction whatsoever of any kind or character, except as provided in this chapter;

(46) “Industrial machinery” means:

(A)(i) Machinery, apparatus and equipment with all associated parts, appurtenances and accessories, including hydraulic fluids, lubricating oils, and greases necessary for operation and maintenance, repair parts and any necessary repair or taxable installation labor therefor, that is necessary to, and primarily for, the fabrication or processing of tangible personal property for resale and consumption off the premises, or pollution control facilities primarily used for air pollution control or water pollution control, where the use of such machinery, equipment or facilities is by one who engages in such fabrication or processing as one’s principal business or who engages in the fabrication or processing of materials into trusses, window units or door units for resale as part of the principal business of the sale of building supplies either within or without this state, or such use by a county or municipality or a contractor pursuant to a contract with such county or municipality for use in water pollution control or sewage systems, also mining machinery, apparatus equipment and materials, with all associated parts and accessories, including repair parts and any necessary repair or installation labor, that is necessary to and primarily for:

(a) The removal, extraction or detachment of coal from land by surface, underground or other lawful methods of mining and the construction or maintenance of necessary ingress and egress from the mine;

(b) The removal, handling and replacement of overburden and spoils materials; or

(c) The reclamation of mined areas reclaimed under state or federal laws, rules or regulations;

(ii) As used in this chapter, “pollution control facilities” means any system, method, improvement, structure, device or appliance appurtenant thereto used or intended for the primary purpose of eliminating, preventing or reducing air or water pollution, or for the primary purpose of treating, pretreating, recycling or disposing of any hazardous or toxic waste, solid or liquid, when such pollutants are created as a result of fabricating or processing by one who engages in fabricating or processing as such person’s principal business activity, which, if released without such treatment, pretreatment, modification or disposal, might be harmful, detrimental or offensive to the public and the public interest;

(B) Machinery that is necessary to and primarily for remanufacturing industrial machinery as defined in subdivision (46)(A) when such utilization is by one whose principal business is that of remanufacturing industrial machinery. For the purposes of this subdivision (46)(B), “remanufacturing” means making new or different products with new or different functions from the scrap materials used to make them;

(C) Machinery utilized in the pre-press and press operations in the business of printing, including plates and cylinders, and including the component parts and fluids or chemicals necessary for the specific mechanical or chemical actions or operations of such machinery, plates and cylinders, regardless of whether or not the operations occur at the point of

retail sales;

(D) Such industrial machinery necessary to and primarily for the fabrication and processing of tangible personal property for resale or used primarily for the control of air pollution or water pollution includes, but is not limited to:

(i) Machines used for generating, producing, and distributing utility services, electricity, steam, and treated or untreated water; and

(ii) Equipment used in transporting raw materials from storage to the manufacturing process, and transporting finished goods from the end of the manufacturing process to storage;

(E)(i) Machinery used to package manufactured items, where the use of such machinery is by a person whose principal business is fabricating or processing tangible personal property for resale. Notwithstanding the principal business of the user, this exemption shall also apply where the use of such machinery at a location is to package automotive aftermarket products manufactured at other locations by the same person or by a corporation affiliated with the manufacturing corporation such that:

(a) Either corporation directly owns or controls one hundred percent (100%) of the capital stock of the other corporation; or

(b) One hundred percent (100%) of the capital stock of both corporations is directly owned or controlled by a common parent;

(ii) To “package,” as used in subdivision (46)(E)(i), refers only to the fabrication and/or installation of that packaging that will accompany the product when sold at retail;

(F) Such industrial machinery necessary to and primarily for the fabrication or processing of tangible personal property for resale and consumption off the premises or used primarily for the control of air pollution or water pollution does not include machinery, apparatus and equipment used prior to or after equipment exempted by subdivision (46)(D)(ii), and does not include equipment used for maintenance or the convenience or comfort of workers;

(G) Machinery, apparatus and equipment with all associated parts, appurtenances and accessories, including hydraulic fluids, lubricating oils and greases necessary for operation and maintenance, repair parts and any necessary repair or taxable installation labor therefor, that is necessary to, and primarily for, the fabricating or processing of prescription eyewear, where a majority of such eyewear is ultimately dispensed to patients in states other than Tennessee;

(H)(i) Material handling equipment and racking systems, used by the taxpayer, directly and primarily for the storage or handling and movement of tangible personal property in a qualified, new or expanded warehouse or distribution facility, that are purchased beginning one (1) year prior to the start of the construction or expansion and ending one (1) year after the substantial completion of the construction or expansion of the facility, but in no event shall the period exceed three (3) years. “Qualified, new or expanded warehouse or distribution facility” means a new or expanded facility, that meets the requirements set out in this subdivision (46)(H), for the storage or distribution of finished tangible personal property. Such facilities shall not include a building where tangible personal property is fabricated, processed, assembled or sold over-the-counter to consumers, except for taxpayers that qualify under

*the provisions of chapter 185 of the Public Acts of 1995, or are configuring, testing or packaging computer products. "Configuring" computer products means integrating a computer with peripheral computer products, such as a hard disk drive, additional memory or software. A qualifying facility must also be:*

*(a) A warehouse or distribution facility constructed in this state through an investment in excess of ten million dollars (\$10,000,000) by the taxpayer, and/or a lessor to the taxpayer, over a period not exceeding three (3) years, in a newly constructed and previously unoccupied building and/or equipment for the facility;*

*(b) An expansion to an existing warehouse or distribution facility, previously qualified under subdivision (46)(H)(i), through an additional investment in excess of ten million dollars (\$10,000,000) by the taxpayer, and/or a lessor to the taxpayer over an additional period not exceeding three (3) years, for additions to the building and the purchase of new equipment for use in the expanded facility;*

*(c) A warehouse or distribution facility in this state that is purchased and either renovated or expanded through an investment in excess of ten million dollars (\$10,000,000) in such purchase and renovation or expansion by the taxpayer, and/or a lessor to the taxpayer, including the purchase of new equipment for such a building, over a period not exceeding three (3) years; or*

*(d) An expansion to an existing warehouse or distribution facility in this state through an aggregate investment in excess of twenty million dollars (\$20,000,000) by the taxpayer, and/or a lessor to the taxpayer, over a period not exceeding three (3) years, consisting of an investment in excess of ten million dollars (\$10,000,000) in the renovation or expansion of an existing building and/or the purchase of new equipment for such a building, together with an investment in excess of ten million dollars (\$10,000,000) in the construction of a new, previously unoccupied building and/or equipment for such a building;*

*(ii) A taxpayer shall qualify for the exemption afforded to material handling and racking systems under subdivision (46)(H)(i) by submitting an application to the commissioner for the exemption, together with a plan describing the investment to be made. The application and plan shall be submitted on forms prescribed by the commissioner. The plan shall demonstrate that the requirements of the law will be met. Upon approval of the exemption request and plan for investment, purchases of the equipment may be made without payment of the sales or use tax. However, if the requisite investment is not made in the time period required, or the terms of the statute are not met, the taxpayer shall be subject to assessment for any tax, penalty or interest that would otherwise have been due;*

*(I) Material handling equipment and racking systems used in a warehouse and distribution facility, subject to all the requirements and conditions of subdivision (46)(H), except:*

*(i) The required investment in excess of ten million dollars (\$10,000,000) may also be made in a previously occupied facility:*

*(a) Through the purchase of a building, and/or the purchase of new equipment for use in the building no later than one (1) year after the purchase of the building; or*

*(b) Through the purchase of new equipment for use in a leased building, not qualifying under subdivision (46)(I)(i)(a), made no later than one (1) year after the date of the lease agreement; and*

*(ii) Any purchases exempted from tax for use in the facility described in this subdivision (46)(I) must be made no later than one (1) year after the purchase of the building under subdivision (46)(I)(i)(a), or no later than one (1) year after the date of the lease agreement under subdivision (46)(I)(i)(b);*

*(J) "Industrial machinery" does not include machinery, apparatus and equipment, with all associated parts, appurtenances, accessories, repair parts, and necessary repair or taxable installation labor therefor; that is used in the preparation of food for immediate retail sale;*

*(K) "Industrial machinery" also includes any "computer", "computer network", "computer software", or "computer system", as defined by § 39-14-601, and any peripheral devices, including, but not limited to, hardware such as printers, plotters, external disc drives, modems, and telephone units, when such items are used in the operation of a qualified data center. For purposes of this subdivision (46)(K), "industrial machinery" includes repair parts, repair or installation services, and warranty or service contracts, purchased for such items used in the operation of a qualified data center; and*

*(L) "Industrial machinery" includes machinery, apparatus and equipment with all associated parts, appurtenances, accessories, repair parts and necessary repair or taxable installation labor therefor; that is necessary to and used primarily for the conversion of tangible personal property into taxable specified digital products for resale and consumption off the premises. "Industrial machinery" does not include machinery, apparatus or equipment, with all associated parts, appurtenances, accessories, repair parts and necessary repair or taxable installation labor therefor; that is used primarily for the storage or distribution of such specified digital products following such conversion;*

*(47) "International," as used in connection with telecommunications services, means a telecommunications service that originates or terminates in the United States, and terminates or originates outside the United States, respectively. United States includes the District of Columbia and a United States territory or possession;*

*(48) "Interstate," as used in connection with telecommunications services, means a telecommunications service that originates in one (1) United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession;*

*(49) "Intrastate," as used in connection with telecommunications services, means a telecommunications service that originates in one (1) United States state or United States territory or possession, and terminates in the same United States state or United States territory or possession;*

*(50) "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller, when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser;*

*(51) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration.*

A “lease or rental” may include future options to purchase or extend;

(A) “Lease or rental” does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars (\$100) or one percent (1%) of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision (51), an operator must do more than maintain, inspect, or set-up the tangible personal property;

(B) “Lease or rental” includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(1);

(C) This subdivision (51) shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, compiled in 26 U.S.C., or title 47, chapter 2A, or other federal, state or local law;

(D) This subdivision (51) shall be applied only prospectively from the date of adoption [January 1, 2008] and shall have no retroactive impact on existing leases or rentals;

(52) “Livestock and poultry feed” means and includes all grains, minerals, salts, proteins, fats, fibers and all vitamins, acids and drugs used and mixed with such ingredients as a growth stimulant, disease preventive, to stimulate feed conversion and make a complete feed;

(53) “Local tax jurisdiction” means a geographic area where the same local option tax, either county tax or a combination of county and municipal tax, applies;

(54) “Mobile telecommunications service” means the same as that term is defined in the Mobile Telecommunications Sourcing Act, Public Law 106-252, codified in 4 U.S.C. § 124(7);

(55) “Mobility enhancing equipment” means equipment, including repair and replacement parts to the equipment, but does not include durable medical equipment that:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another and that is appropriate for use either in a home or a motor vehicle;

(B) Is not generally used by persons with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer;

(56) “Model 1 seller” means a seller that has selected a certified service provider as its agent to perform all of the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases;

(57) “Model 2 seller” means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains

*responsibility for remitting the tax;*

(58) “Model 3 seller” means a seller that has sales in at least five (5) states that are members of the Streamlined Sales and Use Tax Agreement, has total annual sales revenue of at least five hundred million dollars (\$500,000,000), has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this subdivision (58), a seller includes an affiliated group of sellers using the same proprietary system;

(59) “OEM headquarters company” means an original equipment manufacturer that is engaged in the business of manufacturing motor vehicles and qualifies to receive the credit provided in § 67-6-224, or any affiliate thereof. For purposes of this subdivision (59), “affiliate” has the same meaning as provided in § 67-4-2004;

(60) “OEM headquarters company vehicle” means any motor vehicle subject to registration in accordance with title 55 that is owned by an OEM headquarters company, whether used for sales or service training, advertising, quality control, testing, evaluation or such other uses as approved by the commissioner, and, further, including motor vehicles provided by the OEM headquarters company for use by eligible employees and their eligible family members in accordance with policies established by the OEM headquarters company and approved by the commissioner;

(61)(A) “Over-the-counter-drug” means a drug that contains a label that identifies the product as a drug as required by 21 CFR 201.66. The “over-the-counter-drug” label includes:

(i) A drug facts panel; or

(ii) A statement of the active ingredients, with a list of those ingredients contained in the compound, substance or preparation;

(B) “Over-the-counter-drug” does not include grooming and hygiene products;

(62) “Permanent location” does not include any booths or space located at a flea market, antique mall, craft show, antique show, gun show, auto show or any similar type business;

(63) “Person” includes any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, any governmental agency whose services are essentially a private commercial concern, or other group or combination acting as a unit, in the plural as well as the singular number. “Person” further includes any political subdivision or governmental agency, including electric membership corporations or cooperatives, and utility districts, to the extent that such agency sells at retail, rents or furnishes any of the things or services taxable under this chapter;

(64) “Place of primary use” means the street address representative of where the customer’s use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications service, “place of primary use” shall be within the licensed service area of the home service provider;

(65) “Preliminary artwork” means tangible personal property and digital equivalents that are produced by an advertising agency in the course of providing advertising services solely for the purpose of conveying concepts or ideas or demonstrating an idea or message to a client and includes, but is not limited to concept sketches, illustrations, drawings, paintings, models, pho-

*tographs, storyboards or similar materials;*

(66) *“Prepaid calling service” means the right to access exclusively telecommunications services that must be paid for in advance and that enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;*

(67) *“Prepaid wireless calling service” means a telecommunications service that provides the right to utilize mobile wireless service, as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services that must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount;*

(68)(A) *“Prepared food” means:*

*(i) Food sold in a heated state or heated by the seller;*

*(ii) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or*

*(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food;*

*(B) “Prepared food” in subdivision (68)(A)(ii) does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration (FDA) in chapter 3, § 401.11 of the FDA’s food code so as to prevent food borne illnesses;*

(69) *“Prescription” means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state;*

(70) *“Prewritten computer software” means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two (2) or more prewritten computer software programs or prewritten portions of computer software does not cause the combination to be other than prewritten computer software. “Prewritten computer software” includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of that person’s modifications or enhancements. “Prewritten computer software” or a prewritten portion of the computer software that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software;*

(71) *“Private communication service” means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and*

*includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels;*

*(72)(A) "Prosthetic device" means a replacement, corrective, or supportive device including repair and replacement parts for the replacement, corrective, or supportive device worn on or in the body to:*

- (i) Artificially replace a missing portion of the body;*
- (ii) Prevent or correct physical deformity or malfunction; or*
- (iii) Support a weak or deformed portion of the body;*

*(B) "Prosthetic device" does not include:*

- (i) Corrective eyeglasses; or*
- (ii) Contact lenses;*

*(73) "Protective equipment" means items for human wear, designed as protection of the wearer against injury or disease or as protection against damage or injury of other persons or property, but not suitable for general use;*

*(74) "Purchase price" applies to the measure subject to use tax and has the same meaning as sales price;*

*(75) "Qualified data center" means a data center that has made a required capital investment in excess of two hundred fifty million dollars (\$250,000,000) during an investment period not to exceed three (3) years and that creates at least twenty-five (25) net new full-time employee jobs during the investment period paying at least one hundred fifty percent (150%) of the states' average occupational wage as defined in § 67-4-2004. For purposes of this subdivision (75), "required capital investment" means an increase of a business investment in real property, tangible personal property or computer software owned or leased in the state, valued in accordance with generally accepted accounting principles. A capital investment shall be deemed to have been made as of the date of payment or the date the taxpayer enters into a legally binding commitment or contract for purchase or construction. For purposes of this subdivision (75), "full-time employee job" means a permanent, rather than seasonal or part-time employment position for at least twelve (12) consecutive months to a person for at least thirty-seven and one half (37 ½) hours per week with minimum health care, as described in title 56, chapter 7, part 22. The three-year period for making the required capital investment provided for in this subdivision (75) may be extended by the commissioner of economic and community development for a reasonable period, not to exceed four (4) years, for good cause shown. For purposes of this subdivision (75), "good cause" means a determination by the commissioner of economic and community development that the capital investment is a result of the exemption for industrial machinery used by a qualified data center;*

*(76) "Rain check" means the seller allows a customer to purchase an item at a certain price at a later time, because the particular item was out of stock;*

*(77)(A) "Resale" means a subsequent, bona fide sale of the property, services, or taxable item by the purchaser. "Sale for resale" means the sale of the property, services, or taxable item intended for subsequent resale by the purchaser. Any sales for resale shall, however, be in strict compliance with rules and regulations promulgated by the commissioner. Sales of tangible personal property or taxable services made by a dealer to an out-of-state vendor who directs that a dealer act as the out-of-state vendor's agent to deliver or ship tangible personal property or taxable services to the out-of-state vendor's customer, who is a user or consumer, are sales for*

*resale;*

*(B)(i) "Sale for resale" does not include a sale of tangible personal property or software to a dealer for use in the business of selling services. Property used in the business of selling services includes, but is not limited to, property that is regularly furnished to purchasers of the service without separate charge. A dealer that sells services shall be considered the end user and consumer of property used in selling, performing, or furnishing such services. However, "sale for resale" does include the following items in the circumstances described:*

*(a) Repair parts or other property sold to a dealer if such property is subsequently transferred to the customer in conjunction with the dealer's performance of repair services, regardless of whether the dealer makes a separately stated charge for such property;*

*(b) Installation parts or other property sold to a dealer if such property is subsequently transferred to the customer in conjunction with the installation of property that remains tangible personal property following such installation, regardless of whether the dealer makes a separately stated charge for such property;*

*(c) Mobile telephones and similar devices sold to a dealer if such property is subsequently transferred to the customer in conjunction with the sale of commercial mobile radio services (CMRS), regardless of whether the dealer makes a separately stated charge for such property; and*

*(d) Food or beverages sold to a hotel, motel, inn or other dealer that provides lodging accommodations if such food or beverages are subsequently transferred to the customer in conjunction with the dealer's sale of lodging accommodations to the customer, regardless of whether the dealer makes a separately stated charge for such property;*

*(ii) "Sale for resale" does not include a sale of services to a dealer for use in the business of selling, leasing, or renting tangible personal property or computer software. Services used in the business of selling, leasing, or renting tangible personal property include, but are not limited to, services such as cleaning, maintaining, or repairing property that is held as inventory for sale, lease, or rental. A dealer that sells, leases, or rents tangible personal property or computer software shall be considered the end user and consumer of services used in conducting such business;*

*(iii) Nothing in this subdivision (77) shall be construed as amending or otherwise effecting the exemption provided in § 67-6-392;*

*(78) "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent;*

*(79) "Retailer" means and includes every person engaged in the business of making sales at retail, or for distribution, use, consumption, storage to be used or consumed in this state or furnishing any of the things or services taxable under this chapter;*

*(80)(A) "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work, and the furnishing, repairing or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing,*

*preparing or serving such tangible personal property;*

*(B) A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale; provided, that where title to property is taken by an industrial development corporation, within the meaning of title 7, chapter 53, but the property is leased to a taxpayer, the transaction shall be regarded, for purposes of this chapter, as a sale to and purchase by the industrial development corporation followed by a lease, regardless of whether the lessee has an option to purchase any or all of the property from the industrial development corporation;*

*(C) "Sale" includes the furnishing of any of the things or services taxable under this chapter;*

*(D) "Sale" includes the sale, gifts in connection with valuable contributions, exchange or other disposition of admission, dues or fees to membership sports and recreation clubs, places of amusement or recreational or athletic events or for the privilege of having access to or the use of amusement, recreational, athletic or entertainment facilities. Such establishments or facilities include, but are not limited to, the amusement and recreational facilities and motion picture theaters described in the standard industrial classification index prepared by the bureau of the budget of the federal government;*

*(E) "Sale" includes the renting or providing of space to a dealer or vendor without a permanent location in this state or to persons who are registered for sales tax at other locations in this state but who are making sales at this location on a less than permanent basis;*

*(F) "Sale" includes the processing of photographic film into negatives and/or photographic prints for resale;*

*(G) "Sale" includes charges for admission, dues or fees that constitute a sale under this subdivision (80), except tickets for admission sold to a Tennessee dealer for resale upon presentation of a resale certificate. Dealers registered with the state for sales tax purposes may purchase tickets for resale without payment of tax upon presentation to the vendor of a valid certificate of resale;*

*(H) "Sale" includes all transactions that the commissioner, upon investigation, finds to be in lieu of sales;*

*(I) "Sale" includes a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;*

*(J) "Sale" includes a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100) or one percent (1%) of the total required payments; and*

*(K) "Sale" includes any transfer of title or possession, or both, lease or licensing, in any manner or by any means whatsoever of computer software for consideration, and includes the creation of computer software on the premises of the consumer and any programming, transferring or loading of computer software into a computer;*

*(81)(A) "Sales price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any*

*deduction for the following:*

- (i) The seller's cost of the property sold;*
  - (ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;*
  - (iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;*
  - (iv) Delivery charges;*
  - (v) Installation charges; and*
  - (vi) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise;*
- (B) "Sales price" does not include:*
- (i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;*
  - (ii) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser;*
  - (iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser; and*
  - (iv) Credit for any trade-in, as determined by § 67-6-510, that is separately stated on an invoice or similar billing document given to the purchaser;*
- (C) "Sales price" includes consideration received by the seller from third parties, if:*
- (i) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale;*
  - (ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;*
  - (iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and*
  - (iv) One of the following criteria is met:*
    - (a) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount, where the coupon, certificate or documentation is authorized, distributed or granted by a third party, with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;*
    - (b) The purchaser identifies itself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in such a group; or*
    - (c) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser, or on a coupon, certificate or other documentation presented by the purchaser;*

(82) *“School art supplies” means an item commonly used by a student in a course of study for artwork. For purposes of this chapter, the following is an all-inclusive list of “school art supplies”:*

- (A) Clay and glazes;*
- (B) Paintbrushes for artwork;*
- (C) Paints, acrylic, tempera, and oil;*
- (D) Sketch and drawing pads; and*
- (E) Watercolors;*

(83) *“School computer supplies” means an item commonly used by a student in a course of study in which a computer is used. For purposes of this chapter, the following is an all-inclusive list of “school computer supplies”:*

- (A) Computer printers;*
- (B) Computer storage media, diskettes, compact disks;*
- (C) Handheld electronic schedulers, except devices that are cellular phones;*
- (D) Personal digital assistants, except devices that are cellular phones; and*
- (E) Printer supplies for computers, printer paper, printer ink;*

(84) *“School instructional materials” means written material commonly used by a student in a course of study as a reference and to learn the subject being taught. For purposes of this chapter, the following is an all-inclusive list of “school instructional materials”:*

- (A) Reference books;*
- (B) Reference maps and globes;*
- (C) Textbooks; and*
- (D) Workbooks;*

(85) *“School supplies” means an item used by a student in a course of study. For purposes of this chapter, the following is an all-inclusive list of “school supplies”:*

- (A) Binders;*
- (B) Blackboard chalk;*
- (C) Book bags;*
- (D) Calculators;*
- (E) Cellophane tape;*
- (F) Compasses;*
- (G) Composition books;*
- (H) Crayons;*
- (I) Erasers;*
- (J) Folders, expandable, pocket, plastic and manila;*
- (K) Glue, paste, and paste sticks;*
- (L) Highlighters;*
- (M) Index cards;*
- (N) Index card boxes;*
- (O) Legal pads;*
- (P) Lunch boxes;*
- (Q) Markers;*
- (R) Notebooks;*
- (S) Paper, loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper;*
- (T) Pencil boxes and other school supply boxes;*

- (U) Pencil sharpeners;
- (V) Pencils;
- (W) Pens;
- (X) Protractors;
- (Y) Rulers;
- (Z) Scissors; and
- (AA) Writing tablets;

(86) "Service address" means the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid. In the event this may not be known, service address means the origination point of the signal of the telecommunication service first identified by either the seller's telecommunication system or in information received by the seller from its service provider, where the system used to transport the signal is not that of the seller. In the event that neither the location of the telecommunications equipment nor the origination point of the signal are known, service address means the location of the customer's place of primary use;

(87) "Software" means computer software;

(88) "Specified digital products" means electronically transferred digital audio-visual works, digital audio works and digital books. For purposes of this subdivision (88), "electronically transferred" means obtained by the purchaser by means other than tangible storage media;

(89) "Sport or recreational equipment" means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use;

(90) "Storage" means and includes any keeping or retention in this state of tangible personal property for use or consumption in this state, or for any purpose other than sale at retail in the regular course of business; provided, that temporary storage pending shipping or mailing of tangible personal property to nonresidents of Tennessee shall not constitute a taxable use in Tennessee;

(91)(A) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software;

(B) "Tangible personal property" does not include signals broadcast over the airwaves;

(92)(A) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing, without regard to whether such service is referred to as voice over Internet protocol services or is classified by the federal communications commission as enhanced or value added;

(B) "Telecommunications service" does not include:

- (i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by electronic transmission to a purchaser, where such purchaser's primary purpose for the underlying transaction is the processed data or

information;

(ii) *Installation or maintenance of wiring or equipment on a customer's premises;*

(iii) *Tangible personal property;*

(iv) *Advertising including, but not limited to, directory advertising;*

(v) *Billing and collection services provided to third parties;*

(vi) *Internet access service;*

(vii) *Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service, as defined in 47 U.S.C. § 522(6), and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;*

(viii) *Ancillary services; or*

(ix) *Digital products delivered electronically, including, but not limited to, computer software, music, video, reading materials or ringtones;*

(93) *"Textbook" means a printed book that contains systematically organized educational information that covers the primary objectives of a course of study. A textbook may contain stories and excerpts of popular fiction and nonfiction writings, but does not include a book primarily published and distributed for sale to the general public. The term "textbook" does not include a computer or computer software;*

(94) *"Time-share estate" means an ownership or leasehold estate in property devoted to a time-share fee, tenants in common, time span ownership, interval ownership, and a time-share lease;*

(95) *"Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco;*

(96)(A) *"Use" means and includes the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business;*

(B) *"Use" means the coming to rest in Tennessee of catalogues, advertising fliers, or other advertising publications distributed to residents of Tennessee in interstate commerce; provided, that the labeling, temporary storage, and other handling in connection with mailing or shipping of the catalogues, advertising fliers and other advertising publications in interstate commerce to nonresidents of Tennessee shall not constitute a taxable use in Tennessee; and*

(C) *"Use" also means and includes the consumption of any of the services and amusements taxable under this chapter;*

(97) *"Use tax" includes the "use," "consumption," "distribution" and "storage" as defined in this section;*

(98)(A) *"Video programming services" means programming provided by or generally considered comparable to programming provided by a television broadcast station and shall include cable television services sold by a provider authorized pursuant to title 7, chapter 59, wireless cable television services (multipoint distribution service/multichannel multipoint distribution service) and video services provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including Internet protocol technology;*

(B) “Video programming services” does not include any of the following:

(i) Digital products transferred electronically, including, but not limited to, software, ringtones, and reading materials such as books, magazines, and newspapers;

(ii) Audio and video programming services provided by a commercial mobile service provider as defined in 47 U.S.C. § 332(d);

(iii) Audio and video programming services provided as part of, or incidental to, Internet access service, such as, but not limited to, video capable email; provided, that the services are not generally considered comparable to programming provided by a television broadcast station; and

(iv) Direct-to-home satellite television programming services; and

(99) “Workbook” means a printed booklet that contains problems and exercises in which a student may directly write answers or responses to the problems and exercises. The term “workbook” does not include a computer or computer software.

**67-6-313. Interstate commerce — Repair services — Tax credit. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

(a) It is not the intention of this chapter to levy a tax upon articles of tangible personal property imported into this state or produced or manufactured in this state for export.

(b) There is exempt from the sales and use tax repair services, including parts and labor, with respect to qualified tangible personal property, where such services are initiated or completed, or both, by a repair person within the state of Tennessee, and where such property, after having repair services performed on it, is delivered or shipped outside the state of Tennessee. “Qualified tangible personal property” includes machinery, apparatus and equipment, with all associated parts, appurtenances and accessories, that is necessary for:

(1) Extracting or removing any natural resources, including, but not limited to, that which is necessary for mining or logging endeavors;

(2) Building or improving roads or highways;

(3) Land clearing or excavation, or commercial or residential construction;

or

(4) Loading and unloading of containers or truck trailers on and off rail cars, ships, barges or aircraft.

(c)(1) There is exempt from the sales and use tax all repair service labor performed with respect to aircraft engine equipment and aircraft mainframes, where the repair services on such aircraft engine equipment or aircraft mainframes are initiated, performed or completed in repair facilities within the state of Tennessee.

(2) For the purposes of this subsection (c):

(A) “Aircraft engine equipment” means any aircraft engine, including all associated parts, appurtenances and accessories, for the propulsion of aircraft used by a commercial interstate or international air carrier;

(B) “Aircraft mainframes” means any aircraft body, wing, tail assembly, aileron, rudder, landing gear, engine housing, and any other assembly or component integral to the aerodynamic structure of aircraft used by a

commercial interstate or international air carrier; and

(C) "Repair service labor" includes all labor performed in connection with the repair, maintenance, overhauling, rebuilding, or modifying of aircraft engine equipment or of aircraft mainframes together with any test or inspection necessary or appropriate thereto.

(d) There is exempt from the sales and use tax repair services, including parts and labor, to equipment used primarily in interstate commerce, where such repairs are performed outside of Tennessee and the original purchase of such equipment was exempt from sales and use tax.

(e) There is exempt from the sales and use tax all repair parts and labor performed on fire protection machinery, apparatus, and equipment, with all associated parts, appurtenances, and accessories owned by fire departments in states other than Tennessee.

(f) In order to prevent actual multistate taxation of the acts and privileges subject to tax under this chapter, any taxpayer, upon proof acceptable to the commissioner being submitted that the taxpayer has properly paid sales and use tax in another state on such acts and privileges, shall be allowed a credit against the tax imposed by this chapter to the extent of the amount of such tax properly due and paid in another state.

(g)(1) There is exempt from the sales and use tax all repair service labor performed with respect to railroad rolling stock, where the repair services on such railroad rolling stock are initiated, performed or completed in repair facilities located within the state of Tennessee.

(2) As used in this subsection (g):

(A) "Railroad rolling stock" means all railroad equipment, operating on flanged wheels, that is currently being used, or is reasonably intended to be used, principally in interstate commerce; and

(B) "Repair service labor" means labor performed with respect to the repair, maintenance, overhauling, rebuilding, modifying or adapting of railroad rolling stock, together with any test or inspection necessary or appropriate thereto. Such exemption does not apply to repair service labor performed by non-Class 1 railroad companies on Class 1 railroad rolling stock.

(h)(1) There shall be exempt from the sales and use tax the following:

(A) Sales of helicopters or airplanes and related equipment within Tennessee to purchasers who are not residents of the state, where such helicopters or airplanes and related equipment are intended to have a situs out of Tennessee, are in fact removed from Tennessee, within fifteen (15) days from the date of their purchase;

(B) Repair and refurbishment services within Tennessee with respect to helicopters and helicopter components and parts that have their situs outside of Tennessee and are removed from Tennessee within fifteen (15) days from the completion of such repair and refurbishment services. "Repair and refurbishment services" as used in this subdivision (h)(1)(B) and in subdivisions (h)(1)(C) and (D) includes, but is not limited to, modifications, conversions, and installations;

(C) In addition to the exemptions in subdivisions (h)(1)(A) and (B), sales of helicopters and related equipment within Tennessee to purchasers who are not residents of the state, where such helicopters and related equipment are intended to have a situs out of Tennessee, and where such helicopters and related equipment remain within Tennessee following

such sale solely for purposes of repair and refurbishment services, and are in fact removed from Tennessee within fifteen (15) days from the completion of such repair and refurbishment services; and

(D) Repair and refurbishment services within Tennessee with respect to airplanes and airplane components and parts which have their situs outside of Tennessee and are removed from Tennessee within fifteen (15) days from the completion of such repair and refurbishment services when such repair or refurbishment services with respect to such airplanes or airplane components or parts are:

(i) Performed pursuant to and by the registered owner of one (1) or more “supplemental type certificates” issued by the federal aviation administration; or

(ii) Performed pursuant to and by an authorized service facility designated by an original equipment manufacturer for such service with respect to aircraft qualifying as “transport category aircraft” under 14 CFR, parts 25, 29, 91 and 121.

(2) As used in this subsection (h), “helicopter” means an aircraft that derives its lift from blades that rotate about an approximately vertical central axis and that can hover in a stationary position while in flight and move laterally or longitudinally from the hover position.

(i) There is exempt from the sales and use tax the sale of all repair parts, accessories, materials and supplies to a common carrier for use on the purchasing carrier’s freight motor vehicles with a maximum gross weight rating classification of Class One or above under § 55-4-113, or trailers, semi-trailers and pole trailers, as defined in §§ 55-1-105 and 55-4-113, and that are shipped via the purchasing carrier under a bill of lading and transported to a destination outside of this state for use outside this state, where the seller and the purchasing carrier are affiliated with one another such that:

(1) Either corporation directly owns or controls one hundred percent (100%) of the capital stock of the other corporation; or

(2) One hundred percent (100%) of the capital stock of both corporations is directly owned or controlled by a common parent.

(j) There is exempt from sales and use tax, computer media exchange services, where the resulting media is shipped out of Tennessee or to a government agency or nontaxable entity located within Tennessee. “Media exchange services” means the process of transferring stored data from one (1) type of storage medium to another type of storage medium, including, but not limited to, magnetic tapes, magnetic cartridges, CD-ROM, magnetic disks/diskettes, laser disks/diskettes, optical disks/diskettes, or any similar media that is used to store or transfer data from one (1) computer to another.

**67-6-313. Interstate commerce — Repair services — Tax credit. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

*(a) It is not the intention of this chapter to levy a tax upon articles of tangible personal property imported into this state for export or produced or manufactured in this state for export. If the sale of tangible personal property imported into this state is sourced to this state, this exemption shall apply; provided, that the purchaser’s use of the tangible personal property imported into this state is limited to storage, inspection, or repackaging for shipment of the property for*

*export outside this state.*

*(b) There is exempt from the sales and use tax repair services, including parts and labor, with respect to qualified tangible personal property, where such services are initiated or completed, or both, by a repair person within the state of Tennessee, and where such property, after having repair services performed on it, is delivered or shipped outside the state of Tennessee. "Qualified tangible personal property" includes machinery, apparatus and equipment, with all associated parts, appurtenances and accessories, that is necessary for:*

- (1) Extracting or removing any natural resources, including, but not limited to, that which is necessary for mining or logging endeavors;*
- (2) Building or improving roads or highways;*
- (3) Land clearing or excavation, or commercial or residential construction;*

*or*

- (4) Loading and unloading of containers or truck trailers on and off rail cars, ships, barges or aircraft.*

*(c)(1) There is exempt from the sales and use tax all repair service labor performed with respect to aircraft engine equipment and aircraft mainframes, where the repair services on such aircraft engine equipment or aircraft mainframes are initiated, performed or completed in repair facilities within the state of Tennessee.*

*(2) For the purposes of this subsection (c):*

*(A) "Aircraft engine equipment" means any aircraft engine, including all associated parts, appurtenances and accessories, for the propulsion of aircraft used by a commercial interstate or international air carrier;*

*(B) "Aircraft mainframes" means any aircraft body, wing, tail assembly, aileron, rudder, landing gear, engine housing, and any other assembly or component integral to the aerodynamic structure of aircraft used by a commercial interstate or international air carrier; and*

*(C) "Repair service labor" includes all labor performed in connection with the repair, maintenance, overhauling, rebuilding, or modifying of aircraft engine equipment or of aircraft mainframes together with any test or inspection necessary or appropriate thereto.*

*(d) There is exempt from the sales and use tax repair services, including parts and labor, to equipment used primarily in interstate commerce, where such repairs are performed outside of Tennessee and the original purchase of such equipment was exempt from sales and use tax.*

*(e) There is exempt from the sales and use tax all repair parts and labor performed on fire protection machinery, apparatus, and equipment, with all associated parts, appurtenances, and accessories owned by fire departments in states other than Tennessee.*

*(f) In order to prevent actual multistate taxation of the acts and privileges subject to tax under this chapter, any taxpayer, upon proof acceptable to the commissioner being submitted that the taxpayer has properly paid sales and use tax in another state on such acts and privileges, shall be allowed a credit against the tax imposed by this chapter to the extent of the amount of such tax properly due and paid in another state.*

*(g)(1) There is exempt from the sales and use tax all repair service labor performed with respect to railroad rolling stock, where the repair services on such railroad rolling stock are initiated, performed or completed in repair facilities located within the state of Tennessee.*

*(2) As used in this subsection (g):*

(A) “Railroad rolling stock” means all railroad equipment, operating on flanged wheels, that is currently being used, or is reasonably intended to be used, principally in interstate commerce; and

(B) “Repair service labor” means labor performed with respect to the repair, maintenance, overhauling, rebuilding, modifying or adapting of railroad rolling stock, together with any test or inspection necessary or appropriate thereto. Such exemption does not apply to repair service labor performed by non-Class 1 railroad companies on Class 1 railroad rolling stock.

(h)(1) There shall be exempt from the sales and use tax the following:

(A) Sales of helicopters or airplanes and related equipment within Tennessee to purchasers who are not residents of the state, where such helicopters or airplanes and related equipment are intended to have a situs out of Tennessee, are in fact removed from Tennessee, within fifteen (15) days from the date of their purchase;

(B) Repair and refurbishment services within Tennessee with respect to helicopters and helicopter components and parts that have their situs outside of Tennessee and are removed from Tennessee within fifteen (15) days from the completion of such repair and refurbishment services. “Repair and refurbishment services” as used in this subdivision (h)(1)(B) and in subdivisions (h)(1)(C) and (D) includes, but is not limited to, modifications, conversions, and installations;

(C) In addition to the exemptions in subdivisions (h)(1)(A) and (B), sales of helicopters and related equipment within Tennessee to purchasers who are not residents of the state, where such helicopters and related equipment are intended to have a situs out of Tennessee, and where such helicopters and related equipment remain within Tennessee following such sale solely for purposes of repair and refurbishment services, and are in fact removed from Tennessee within fifteen (15) days from the completion of such repair and refurbishment services; and

(D) Repair and refurbishment services within Tennessee with respect to airplanes and airplane components and parts which have their situs outside of Tennessee and are removed from Tennessee within fifteen (15) days from the completion of such repair and refurbishment services when such repair or refurbishment services with respect to such airplanes or airplane components or parts are:

(i) Performed pursuant to and by the registered owner of one (1) or more “supplemental type certificates” issued by the federal aviation administration; or

(ii) Performed pursuant to and by an authorized service facility designated by an original equipment manufacturer for such service with respect to aircraft qualifying as “transport category aircraft” under 14 CFR, parts 25, 29, 91 and 121.

(2) As used in this subsection (h), “helicopter” means an aircraft that derives its lift from blades that rotate about an approximately vertical central axis and that can hover in a stationary position while in flight and move laterally or longitudinally from the hover position.

(i) There is exempt from the sales and use tax the sale of all repair parts, accessories, materials and supplies to a common carrier for use on the purchasing carrier’s freight motor vehicles with a maximum gross weight rating classification of Class One or above under § 55-4-113, or trailers,

*semi-trailers and pole trailers, as defined in §§ 55-1-105 and 55-4-113, and that are shipped via the purchasing carrier under a bill of lading and transported to a destination outside of this state for use outside this state, where the seller and the purchasing carrier are affiliated with one another such that:*

*(1) Either corporation directly owns or controls one hundred percent (100%) of the capital stock of the other corporation; or*

*(2) One hundred percent (100%) of the capital stock of both corporations is directly owned or controlled by a common parent.*

*(j) There is exempt from sales and use tax, computer media exchange services, where the resulting media is shipped out of Tennessee or to a government agency or nontaxable entity located within Tennessee. "Media exchange services" means the process of transferring stored data from one (1) type of storage medium to another type of storage medium, including, but not limited to, magnetic tapes, magnetic cartridges, CD-ROM, magnetic disks/diskettes, laser disks/diskettes, optical disks/diskettes, or any similar media that is used to store or transfer data from one (1) computer to another.*

#### **67-8-315. Deductions.**

(a) For the purpose of determining the net estate subject to tax, the following deductions shall be deducted from the value of the gross estate; except that, in the case of a transfer other than by will or intestate law, the only deductions permitted shall be liens subject to which the transfer is made and transfer taxes paid or payable to other jurisdictions on intangible personal property; additionally, except for the deduction in subdivision (a)(6), in the case of the estate of a nonresident, only such portion of the following deductions shall be allowed as is properly chargeable against the property, the transfer of which is subject to taxation:

(1) The value of all property taxable under this part and part 4 of this chapter transferred to the United States, the state of Tennessee, or to any political subdivision thereof, any public institution therein exclusively used for public purposes, or any corporation, society, association or trust therein, or in a state that grants a like exemption to such institution in Tennessee formed for charitable, educational, scientific or religious purposes; provided, that the property so transferred is to be used exclusively for one (1) or more such purposes, but no deduction shall be allowed on account of property transferred to any such beneficiary, if any officer, member, shareholder or employee thereof shall receive, or be entitled to receive, any benefit or pecuniary profit from the operation thereof, except reasonable compensation in affecting one (1) or more of such purposes, or as beneficiaries of a strictly charitable purpose; if the organization of any such corporation, society, association or trust for any of the foregoing avowed purposes be a mere guise or pretense for directly or indirectly making for it or any of its officers, members, shareholders or employees any other pecuniary profit; or if it be not in good faith organized or conducted for one (1) or more of such purposes;

(2) Taxes:

(A) On real and tangible personal property within this state that were a lien at the date of death;

(B) On intangible personal property of the decedent or on the income from the property that constituted a personal obligation during the decedent's lifetime, or were a lien at date of death;

(C) Federal income taxes accrued upon the income of the decedent at the date of death;

(D) Death duties paid or payable to other jurisdictions on intangible personal property, but no deduction shall be allowed for the payment of any federal estate taxes; and

(E) Special assessments that, at the time of decedent's death, were a lien on real property within this state;

(3) Actual funeral expenses, and all other amounts reasonably and actually expended, or contracted to be expended, for the purchase of a memorial, or monument, to the decedent, if a resident of the state;

(4)(A) Expenses of administration, including accounting fees, appraisal fees, court costs, compensation of executors, administrators, or trustees and their attorneys actually allowed and paid, not in excess of lawful rates. Where the claimed allowance is excessive, the commissioner is authorized to reduce it to a reasonable amount for the purpose of computing the tax. From an action of the commissioner in reducing the claimed amount, an appeal may be taken to the board provided for in § 67-8-411.

(B) Interest on federal estate tax actually paid and allowed by virtue of the Internal Revenue Code, codified in 26 U.S.C. §§ 6161 and 6166, and interest on Tennessee inheritance tax actually paid and allowed by virtue of § 67-8-419(b), for a period not to exceed twenty-one (21) months after the date of the decedent's death is deductible as an expense of administration, but shall not be so allowed as a deduction in any other event or circumstance nor for any further length of time;

(5) Debts of the decedent that constituted lawful claims against the decedent's estate at the date of death; provided, that in the case of a resident decedent there shall not be allowed a debt secured by property outside of this state; except when the property by which the debt is secured is included in the measure of the tax imposed, or except when such debt exceeds the value of the property securing it, in which case the excess may be deducted; and

(6) An amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate. In determining the amount qualifying for the deduction under this subdivision (a)(6), the limitations, restrictions, definitions, elections and requirements set out in § 2056(b) and (c) of the Internal Revenue Code, codified in 26 U.S.C. § 2056(b) and (c), shall be applicable to the deduction allowed by this subsection (a); provided, that the election specified by § 2056(b)(7) of the Internal Revenue Code, codified in 26 U.S.C. § 2056(b)(7), must be made to the department.

(b) No deduction from the value of the property included in the gross estate shall be allowed on account of any claim against the estate arising from a contract made by the decedent and payable by its terms at or after death, unless such claim is supported, in whole or in part, by a valuable consideration, in which event only so much thereof as is the equivalent in money value of the money value of the consideration received by the decedent shall be allowed as a deduction, but the remaining portion shall not be.

#### **67-8-504. Arbitration.**

If in any such case it appears that an agreement cannot be reached as

provided in § 67-8-503, or if one (1) year shall have elapsed from the date of the election without such an agreement having been reached, the domicile of the decedent at the time of death shall be determined solely for inheritance tax purposes as follows:

(1) Where only this state and one (1) other state are involved, the commissioner and the taxing official of such other state shall each appoint a member of a board of arbitration, and the members so appointed shall select the third member of the board. If this state and more than one (1) other state are involved, the taxing officials thereof shall agree upon the authorities charged with the duty of administering inheritance tax laws in three (3) states not involved, each of which authorities shall appoint a member of the board. The members of the board shall elect one (1) of their number as chair;

(2) Such board shall hold hearings at such places as are deemed necessary, upon reasonable notice to the executors, ancillary administrators, all other interested persons, and the taxing officials of the states involved, all of whom shall be entitled to be heard;

(3) Such board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of books, papers and documents and issue commissions to take testimony. Subpoenas may be issued by any members of the board. Failure to obey a subpoena may be punished by a judge of any court of record in the same manner as if the subpoena had been issued by such judge or by the court in which such judge functions;

(4) Such board shall apply, whenever practicable, the rules of evidence which prevail in federal courts under the federal rules of civil procedure at the time of the hearing;

(5) Such board shall, by majority vote, determine the domicile of the decedent at the time of death. Such determination shall be final and conclusive, and shall bind this state and all of its judicial and administrative officials on all questions concerning the domicile of the decedent for inheritance tax purposes;

(6) The reasonable compensation and expenses of the members of the board and employees thereof shall be agreed upon among such members, the taxing officials involved, and the executors. In the event an agreement cannot be reached, such compensation and expenses shall be determined by such taxing officials, and if they cannot agree, by the appropriate probate court of the state determined to be the domicile. Such amount shall be borne by the estate and shall be deemed an administration expense; and

(7) The determination of such board and the record of its proceedings shall be filed with the authority having jurisdiction to assess the inheritance tax in the state determined to be the domicile of the decedent, and with the authorities that would have had jurisdiction to assess the inheritance tax in each of the other states involved, if the decedent had been found to be domiciled in the state.

**68-11-216. Annual license fees — Liens — Revocation of licenses — Penalties — Annual nursing home assessment fee. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

(a)(1) The board is authorized to promulgate, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, such

rules and regulations as are necessary to set fees for licensure, renewal of licensure, late renewal fees and such other fees as are necessary to comply with the intent of subsection (b), for the entities and facilities listed in § 68-11-202(a)(1).

(2) The entities and facilities referenced in subdivision (a)(1), except those operated by the United States government or the state of Tennessee, shall make application for licensure and renewal under this part and shall pay the fees applicable to them to the department for regulatory purposes.

(3) The licensure and annual renewal fees for the following types of home care organizations shall not exceed twenty-five percent (25%) of the total licensure and annual renewal fees set by the board for all other home care organizations:

(A) Home care organizations that also pay a fee to be licensed by the department of mental health and substance abuse services;

(B) Home care organizations owned and operated by therapists who pay a fee to be licensed under title 63, chapter 13 or chapter 17; or

(C) Home care organizations that are owned and controlled by another home care organization that pays an annual license or renewal fee.

(4) Excluded from payment of the fees as an ambulatory surgical treatment center and an outpatient diagnostic center are hospital based ambulatory surgical treatment centers and outpatient diagnostic centers that are included in the licensing and renewal fee of the hospital in which they are located.

(5) Prior to the promulgation of a rule increasing fees for licensed health care facilities, the department of health shall present to the board a detailed report justifying the proposed fee amount. The report shall include at least the following elements:

(A) The fees currently charged, the proposed new fees, and the percentage increase expected from the proposed fees;

(B) The total number of full-time equivalent positions funded, and how those positions are funded, if not entirely from fee revenue;

(C) Justification for any increase in fees, including an itemization of actual or expected increases in costs to the board, and inspection or licensure activities on which any proposed increases in funding will be spent; and

(D) A specific breakdown that differentiates the costs incurred for licensure activities under state law from any other activity required by a contractual or legal requirement with the federal government.

(6) Not later than sixty (60) calendar days prior to the presentation of the report and the information outlined in subdivision (a)(5) to the board, the report and the information outlined in subdivision (a)(5) shall be provided to the board and any provider association representing such a facility affected by a proposed change in licensure fees. The report and information shall be provided in both paper and electronic format, and shall be made available to any affected licensed facility upon request.

(7) Any increase or decrease in fees proposed or approved by the board must increase or decrease the fees for all licensed facilities by a similar percentage amount, which shall not vary more than five percent (5%) between facility types.

(b)(1) The fees established by the board shall be submitted with the appropriate applications. All fees so collected shall be deposited by the

department with the state treasurer to the credit of the general fund, and shall be expended by the department and included in the appropriation made for the board in the general appropriations act.

(2) It is the intent of the general assembly that the board establish and collect fees in an amount sufficient to pay the costs of operating the board, including, but not limited to, licensure and inspection costs. On or before December 31 of each year, the commissioner shall certify and report to the government operations committee of each house of the general assembly, if the board did not, during the fiscal year, collect fees in an amount sufficient to pay the costs of operating the board. If the board fails to collect sufficient fees to pay the costs of operating the board for a period of two (2) consecutive fiscal years, the board shall be reviewed by the joint evaluation committees and shall be subject to a revised termination date of June 30 of the fiscal year immediately following the second consecutive fiscal year during which the board operated at a deficit.

(c)(1) It is declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of providing nursing home care. The assessment fee imposed by this subsection (c) shall be in addition to all other privilege taxes.

(2) Effective for one (1) year beginning July 1, 2013, in addition to the fees set forth in subsection (a), each nursing home shall pay a nursing home annual assessment fee as set forth in this subsection (c). Such assessment fee shall be paid in equal monthly installments of one-twelfth ( $\frac{1}{12}$ ) of the annual amount established by this subsection (c). The installments are due on the fifteenth day of each following month beginning August 15, 2013, for the July 2013 installment and ending with a final payment on July 15, 2014.

(3) The nursing home annual assessment fee shall be based on the number of nursing home beds licensed by this state on July 1, 2013, for the fiscal year following such date, excluding beds in nursing homes specifically certified as intermediate care beds for the mentally retarded. The assessment fee shall be uniformly applied to all licensed beds at the rate of two thousand two hundred twenty-five dollars (\$2,225) per licensed bed per year. Licensed facilities that are owned or operated by an agency of this state are not excluded from paying the assessment fee. There shall be no exclusions, deductions or adjustments applied to the assessment fee of any licensed facility different from any other such facility. Beds licensed after July 1, 2013, shall pay a prorated amount of the annual assessment fee for the fiscal year following such date; provided, that no such assessment fee shall be due to the extent that the beds licensed after July 1, 2013, were the result of the transfer of such beds from one (1) licensed facility to another licensed facility, where the transferor facility had already paid the full amount of the assessment fee on such beds, or where the transferor facility agrees to continue to pay the monthly installments due with respect to such beds.

(4) The commissioner shall adopt rules and regulations governing the collection of such assessment fees. Notwithstanding any other law, the commissioner is authorized to promulgate such rules as emergency rules pursuant to the Uniform Administrative Procedures Act.

(5) Any challenge to the assessment fee imposed by this subsection (c) shall be brought pursuant to title 67, chapter 1, part 9 and § 9-8-307(a)(1)(O).

(6)(A) All revenue collected pursuant to this subsection (c) shall be

deposited in the general fund.

(B) All nursing home annual assessment fee payments made by nursing homes under this section and received by this state; all investment earnings credited to the nursing home annual assessment fee payments; any interest and penalties paid under this section by any nursing home; and all funds generated by federal matching payments made relative to the nursing home annual assessment fee shall be available to and used by the bureau of TennCare for the sole purpose of providing payment to nursing homes.

(C) No part of the nursing home annual assessment fee payments made by nursing homes under this section and received by this state; the investment earnings credited to the nursing home annual assessment fee payments; the interest and penalties paid under this section by any nursing home; or the funds generated by federal matching payments made relative to the nursing home annual assessment fee shall be used for any purpose other than providing payment to nursing homes.

(7)(A) If any part of any assessment fee imposed under this subsection (c) is not paid on or before the due date, a penalty of five percent (5%) of the amount due shall at once accrue and be added to such assessment fee. Thereafter, on the first day of each month during which any part of any assessment fee or any prior accrued penalty remains unpaid, an additional penalty of five percent (5%) of the then unpaid balance shall accrue and be added to such assessment fee or prior accrued penalty. In addition, assessment fees under this subsection (c) not paid on the due date shall bear interest at the maximum lawful rate from the due date to the date paid. Payment shall be deemed to have been made upon date of deposit in the United States mail. The commissioner may for good cause approve an alternative payment plan, as long as full payment of the assessment fee plus penalty and interest is made.

(B) If a nursing home is more than ninety (90) days delinquent in paying an installment of its annual nursing home assessment fee, the commissioner shall initiate proceedings before the board in accordance with the Uniform Administrative Procedures Act, so that the board may suspend admissions to the facility or otherwise direct the facility to pay the assessment fee and any accrued penalties and interest in full within a prescribed period of time. If the facility does not pay the assessment fee and any accrued penalties and interest in full within the prescribed period of time as directed by the board, the board shall suspend admissions to the facility. Any suspension of admissions imposed according to this section shall immediately be lifted following the full payment of the assessment fee and any accrued penalties and interest by the facility. If full payment of the assessment fee and any accrued penalties and interest is not paid within sixty (60) days from the first day of the suspension of admissions, the commissioner shall be authorized to initiate proceedings before the board in accordance with the Uniform Administrative Procedures Act so that the board may consider the revocation of the facility's license.

(C)(i) In cases where a licensed nursing home is delinquent on assessment fees beginning July 1, 2009, and ending June 30, 2012, and is currently participating in a payment plan, the commissioner shall be authorized to reduce the amount of penalties and interest due for that time period to twenty-five percent (25%) of the total assessment fee

outstanding balance as of June 30, 2012. For purposes of this subdivision (c)(7)(C), the total assessment fee outstanding balance is calculated as the total assessment fees owed not including any penalties and interest, less any payments made by the facility, beginning July 1, 2009, and ending June 30, 2012.

(ii) This subdivision (c)(7)(C) shall terminate on July 1, 2015, unless reenacted or extended by the general assembly prior to such date.

(8) The assessment fee imposed by this subsection (c) may not be billed by the nursing home as a separately stated charge, but this shall not prevent the nursing home from adjusting its rates to defray the cost associated with the assessment fee.

(9) The fiscal review committee shall review and have oversight of the implementation of this subsection (c).

(10) Enactment of this subsection (c) and any amendments to this subsection (c) shall not operate to excuse the monthly installment payment of the nursing home assessment fee due on July 15, 2013.

(11) Any assessment fee obligation imposed by this subsection (c) shall be suspended to the extent that, and for the period that receipt of the assessment fee by the state results in, a corresponding reduction in federal financial participation under Title XIX of the federal Social Security Act, compiled in 42 U.S.C. § 1396 et seq.

(12) The nursing home annual assessment fee established by this subsection (c) shall terminate on June 30, 2014.

**68-11-216. Annual license fees — Liens — Revocation of licenses — Penalties — Annual nursing home tax. [Effective on July 1, 2015. See the version effective until July 1, 2015.]**

*(a)(1) The board is authorized to promulgate, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, such rules and regulations as are necessary to set fees for licensure, renewal of licensure, late renewal fees and such other fees as are necessary to comply with the intent of subsection (b), for the entities and facilities listed in § 68-11-202(a)(1).*

*(2) The entities and facilities referenced in subdivision (a)(1), except those operated by the United States government or the state of Tennessee, shall make application for licensure and renewal under this part and shall pay the fees applicable to them to the department for regulatory purposes.*

*(3) The licensure and annual renewal fees for the following types of home care organizations shall not exceed twenty-five percent (25%) of the total licensure and annual renewal fees set by the board for all other home care organizations:*

*(A) Home care organizations that also pay a fee to be licensed by the department of mental health and substance abuse services;*

*(B) Home care organizations owned and operated by therapists who pay a fee to be licensed under title 63, chapter 13 or chapter 17; or*

*(C) Home care organizations that are owned and controlled by another home care organization that pays an annual license or renewal fee.*

*(4) Excluded from payment of the fees as an ambulatory surgical treatment center and an outpatient diagnostic center are hospital based ambulatory surgical treatment centers and outpatient diagnostic centers that are included in the licensing and renewal fee of the hospital in which they are*

located.

(5) *Prior to the promulgation of a rule increasing fees for licensed health care facilities, the department of health shall present to the board a detailed report justifying the proposed fee amount. The report shall include at least the following elements:*

(A) *The fees currently charged, the proposed new fees, and the percentage increase expected from the proposed fees;*

(B) *The total number of full-time equivalent positions funded, and how those positions are funded, if not entirely from fee revenue;*

(C) *Justification for any increase in fees, including an itemization of actual or expected increases in costs to the board, and inspection or licensure activities on which any proposed increases in funding will be spent; and*

(D) *A specific breakdown that differentiates the costs incurred for licensure activities under state law from any other activity required by a contractual or legal requirement with the federal government.*

(6) *Not later than sixty (60) calendar days prior to the presentation of the report and the information outlined in subdivision (a)(5) to the board, the report and the information outlined in subdivision (a)(5) shall be provided to the board and any provider association representing such a facility affected by a proposed change in licensure fees. The report and information shall be provided in both paper and electronic format, and shall be made available to any affected licensed facility upon request.*

(7) *Any increase or decrease in fees proposed or approved by the board must increase or decrease the fees for all licensed facilities by a similar percentage amount, which shall not vary more than five percent (5%) between facility types.*

(b)(1) *The fees established by the board shall be submitted with the appropriate applications. All fees so collected shall be deposited by the department with the state treasurer to the credit of the general fund, and shall be expended by the department and included in the appropriation made for the board in the general appropriations act.*

(2) *It is the intent of the general assembly that the board establish and collect fees in an amount sufficient to pay the costs of operating the board, including, but not limited to, licensure and inspection costs. On or before December 31 of each year, the commissioner shall certify and report to the government operations committee of each house of the general assembly, if the board did not, during the fiscal year, collect fees in an amount sufficient to pay the costs of operating the board. If the board fails to collect sufficient fees to pay the costs of operating the board for a period of two (2) consecutive fiscal years, the board shall be reviewed by the joint evaluation committees and shall be subject to a revised termination date of June 30 of the fiscal year immediately following the second consecutive fiscal year during which the board operated at a deficit.*

(c)(1) *It is declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of providing nursing home care. The assessment fee imposed by this subsection (c) shall be in addition to all other privilege taxes.*

(2) *Effective for one (1) year beginning July 1, 2013, in addition to the fees set forth in subsection (a), each nursing home shall pay a nursing home annual assessment fee as set forth in this subsection (c). Such assessment fee*

*shall be paid in equal monthly installments of one-twelfth ( $1/12$ ) of the annual amount established by this subsection (c). The installments are due on the fifteenth day of each following month beginning August 15, 2013, for the July 2013 installment and ending with a final payment on July 15, 2014.*

*(3) The nursing home annual assessment fee shall be based on the number of nursing home beds licensed by this state on July 1, 2013, for the fiscal year following such date, excluding beds in nursing homes specifically certified as intermediate care beds for the mentally retarded. The assessment fee shall be uniformly applied to all licensed beds at the rate of two thousand two hundred twenty-five dollars (\$2,225) per licensed bed per year. Licensed facilities that are owned or operated by an agency of this state are not excluded from paying the assessment fee. There shall be no exclusions, deductions or adjustments applied to the assessment fee of any licensed facility different from any other such facility. Beds licensed after July 1, 2013, shall pay a prorated amount of the annual assessment fee for the fiscal year following such date; provided, that no such assessment fee shall be due to the extent that the beds licensed after July 1, 2013, were the result of the transfer of such beds from one (1) licensed facility to another licensed facility, where the transferor facility had already paid the full amount of the assessment fee on such beds, or where the transferor facility agrees to continue to pay the monthly installments due with respect to such beds.*

*(4) The commissioner shall adopt rules and regulations governing the collection of such assessment fees. Notwithstanding any other law, the commissioner is authorized to promulgate such rules as emergency rules pursuant to the Uniform Administrative Procedures Act.*

*(5) Any challenge to the assessment fee imposed by this subsection (c) shall be brought pursuant to title 67, chapter 1, part 9 and § 9-8-307(a)(1)(O).*

*(6)(A) All revenue collected pursuant to this subsection (c) shall be deposited in the general fund.*

*(B) All nursing home annual assessment fee payments made by nursing homes under this section and received by this state; all investment earnings credited to the nursing home annual assessment fee payments; any interest and penalties paid under this section by any nursing home; and all funds generated by federal matching payments made relative to the nursing home annual assessment fee shall be available to and used by the bureau of TennCare for the sole purpose of providing payment to nursing homes.*

*(C) No part of the nursing home annual assessment fee payments made by nursing homes under this section and received by this state; the investment earnings credited to the nursing home annual assessment fee payments; the interest and penalties paid under this section by any nursing home; or the funds generated by federal matching payments made relative to the nursing home annual assessment fee shall be used for any purpose other than providing payment to nursing homes.*

*(7)(A) If any part of any assessment fee imposed under this subsection (c) is not paid on or before the due date, a penalty of five percent (5%) of the amount due shall at once accrue and be added to such assessment fee. Thereafter, on the first day of each month during which any part of any assessment fee or any prior accrued penalty remains unpaid, an additional penalty of five percent (5%) of the then unpaid balance shall accrue and be added to such assessment fee or prior accrued penalty. In addition, assessment fees under this subsection (c) not paid on the due date shall bear*

*interest at the maximum lawful rate from the due date to the date paid. Payment shall be deemed to have been made upon date of deposit in the United States mail. The commissioner may for good cause approve an alternative payment plan, as long as full payment of the assessment fee plus penalty and interest is made.*

*(B) If a nursing home is more than ninety (90) days delinquent in paying an installment of its annual nursing home assessment fee, the commissioner shall initiate proceedings before the board in accordance with the Uniform Administrative Procedures Act, so that the board may suspend admissions to the facility or otherwise direct the facility to pay the assessment fee and any accrued penalties and interest in full within a prescribed period of time. If the facility does not pay the assessment fee and any accrued penalties and interest in full within the prescribed period of time as directed by the board, the board shall suspend admissions to the facility. Any suspension of admissions imposed according to this section shall immediately be lifted following the full payment of the assessment fee and any accrued penalties and interest by the facility. If full payment of the assessment fee and any accrued penalties and interest is not paid within sixty (60) days from the first day of the suspension of admissions, the commissioner shall be authorized to initiate proceedings before the board in accordance with the Uniform Administrative Procedures Act so that the board may consider the revocation of the facility's license.*

*(8) The assessment fee imposed by this subsection (c) may not be billed by the nursing home as a separately stated charge, but this shall not prevent the nursing home from adjusting its rates to defray the cost associated with the assessment fee.*

*(9) The fiscal review committee shall review and have oversight of the implementation of this subsection (c).*

*(10) Enactment of this subsection (c) and any amendments to this subsection (c) shall not operate to excuse the monthly installment payment of the nursing home assessment fee due on July 15, 2013.*

*(11) Any assessment fee obligation imposed by this subsection (c) shall be suspended to the extent that, and for the period that receipt of the assessment fee by the state results in, a corresponding reduction in federal financial participation under Title XIX of the federal Social Security Act, compiled in 42 U.S.C. § 1396 et seq.*

*(12) The nursing home annual assessment fee established by this subsection (c) shall terminate on June 30, 2014.*

**68-14-703. Proof of financial responsibility. [Effective until July 1, 2015. See the version effective on July 1, 2015.]**

(a) All vehicles owned by a quick fast food establishment used in the delivery of its products must meet the requirements for proof of financial responsibility in accordance with § 55-12-102(12)(A).

(b) No employee shall be authorized to use the employee's personal vehicle unless the employee provides written proof of compliance with financial responsibility requirements to the quick fast food establishment, unless such requirements are met by the employer to cover the employee's vehicle. Written proof of compliance with the financial responsibility statute shall be presented at the time the person is hired to provide delivery services and at least quarterly thereafter while employed in such capacity.

**69-3-103. Part definitions.**

As used in this part, unless the context otherwise requires:

(1) "Administrator" means the administrator, or head by whatever name, of the United States environmental protection agency;

(2) "Areawide waste treatment management plan" means a plan that has been approved by the administrator pursuant to § 208 of the Federal Water Pollution Control Act, Public Law 92-500, codified in 33 U.S.C. § 1288;

(3) "Board" means the board of water quality, oil and gas, created in § 69-3-104;

(4) "Boat" means any vessel or watercraft moved by oars, paddles, sails or other power mechanism, inboard or outboard, or any vessel or structure floating upon the water whether or not capable of self-locomotion, including, but not limited to, houseboats, barges, docks, and similar floating objects;

(5) "Commissioner" means the commissioner of environment and conservation or the commissioner's duly authorized representative and, in the event of the commissioner's absence or a vacancy in the office of commissioner, the deputy commissioner;

(6) "Concentrated animal feeding operation" means such term as it is defined by the environmental protection agency; however, the department may, by permit requirements or by regulations adopted by the board in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, adopt a more stringent definition of "concentrated animal feeding operation";

(7) "Construction" means any placement, assembly, or installation of facilities or equipment, including contractual obligations to purchase such facilities or equipment, at the premises where such equipment will be used, including preparation work at such premises;

(8) "Department" means the department of environment and conservation;

(9) "Director" means the director of the division of water management of the department;

(10) "Discharge of a pollutant," "discharge of pollutants," and "discharge," when used without qualification, each refer to the addition of pollutants to waters from a source;

(11) "Division" means the division of water management;

(12) "Effluent limitation" means any restriction, established by the board or the commissioner, on quantities, rates and concentrations of chemical, physical, biological, and other constituents that are discharged into waters or adjacent to waters;

(13) "Forestry best management practices" means those land and water resource conservation measures that prevent, limit, or eliminate water pollution for forest resource management purposes, as provided in rules promulgated in this part in accordance with § 11-4-301(d)(18). Until those rules are effective, "forestry best management practices" will be those that have been developed by the division of forestry of the department of agriculture. The commissioner of agriculture shall specifically identify these interim forestry best management practices prior to September 1, 2000;

(14) "Industrial user" means those industries identified in the standard industrial classification manual, bureau of the budget, 1967, as amended and supplemented, under the category "Division D — Manufacturing" and such other classes of significant waste producers as the board or commis-

sioner deems appropriate;

(15) "Industrial wastes" means any liquid, solid, or gaseous substance, or combination thereof, or form of energy including heat, resulting from any process of industry, manufacture, trade, or business or from the development of any natural resource;

(16) "Local administrative officer" means the chief administrative officer of a pretreatment agency that has adopted and implemented an approved pretreatment program pursuant to this part and 33 U.S.C. § 1251 et seq. and 40 CFR 403.1 et seq.;

(17) "Local hearing authority" means the administrative board created pursuant to an approved pretreatment program that is responsible for the administration and enforcement of that program and §§ 69-3-123 — 69-3-129;

(18) "Member" means a member of the board of water quality, oil and gas;

(19) "Municipal separate storm sewer system" means a municipal separate storm sewer system as defined in the Clean Water Act, compiled in 33 U.S.C. § 1251 et seq., and the rules promulgated thereunder;

(20) "New source" means any source, the construction of which is commenced after the publication of state or federal regulations prescribing a standard of performance applicable to such source;

(21) "Obligate lotic aquatic organisms" means organisms that require flowing water for all or almost all of the aquatic phase of their life cycles;

(22) "Operator" as used in the context of silvicultural activities, means any person who conducts or exercises control over any silvicultural activities; provided, however, that the term "operator" does not include an owner if the silvicultural activities are being conducted by an independent contractor;

(23) "Other wastes" means any and all other substances or forms of energy, with the exception of sewage and industrial wastes, including, but not limited to, decayed wood, sand, garbage, silt, municipal refuse, sawdust, shavings, bark, lime, ashes, offal, oil, hazardous materials, tar, sludge, or other petroleum byproducts, radioactive material, chemicals, heated substances, dredged spoil, solid waste, incinerator residue, sewage sludge, munitions, biological materials, wrecked and discarded equipment, rock, and cellar dirt;

(24) "Owner" as used in the context of silvicultural activities, means any person or persons that own or lease land on which silvicultural activities occur or own timber on land on which silvicultural activities occur;

(25) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a source;

(26) "Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, state and federal agencies, municipalities or political subdivisions, or officers thereof, departments, agencies, or instrumentalities, or public or private corporations or officers thereof, organized or existing under the laws of this or any other state or country;

(27) "Pollutant" means sewage, industrial wastes, or other wastes;

(28) "Pollution" means such alteration of the physical, chemical, biological, bacteriological, or radiological properties of the waters of this state, including, but not limited to, changes in temperature, taste, color, turbidity, or odor of the waters that will:

(A) Result or will likely result in harm, potential harm or detriment to the public health, safety, or welfare;

(B) Result or will likely result in harm, potential harm or detriment to the health of animals, birds, fish, or aquatic life;

(C) Render or will likely render the waters substantially less useful for domestic, municipal, industrial, agricultural, recreational, or other reasonable uses; or

(D) Leave or likely leave the waters in such condition as to violate any standards of water quality established by the board;

(29) "Pretreatment agency" means the owner of a publicly owned treatment works permitted pursuant to this part that is required by its permit to adopt and enforce an approved pretreatment program that complies with this part and 33 U.S.C. § 1251 et seq. and 40 CFR 403.1 et seq.;

(30) "Pretreatment program" means the rules, regulations, and/or ordinances of a pretreatment agency regulating the discharge and treatment of industrial waste that complies with this part and 33 U.S.C. § 1251 et seq. and 40 CFR 403.1 et seq.;

(31) "Qualified local program" means a municipal separate storm sewer system that has been approved as such by the department pursuant to this part;

(32) "Regional administrator" means the regional administrator of the United States environmental protection agency whose region includes Tennessee, or any person succeeding to the duties of this official;

(33) "Schedules of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, condition of a permit, other limitation, prohibition, standard, or regulation;

(34) "Sewage" means water-carried waste or discharges from human beings or animals, from residences, public or private buildings, or industrial establishments, or boats, together with such other wastes and ground, surface, storm, or other water as may be present;

(35) "Sewerage system" means the conduits, sewers, and all devices and appurtenances by means of which sewage and other waste is collected, pumped, treated, or disposed;

(36) "Silvicultural activities" means those forest management activities associated with the harvesting of timber and including, without limitation, the construction of roads and trails;

(37) "Source" means any activity, operation, construction, building, structure, facility, or installation from which there is or may be the discharge of pollutants;

(38) "Standard of performance" means a standard for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction that the commissioner determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants;

(39) "Stop work order" means an order issued by the commissioner of environment and conservation requiring the operator to immediately cease part or all silvicultural activities;

(40) "Stream" means a surface water that is not a wet weather conveyance;

(41) "Toxic effluent limitation" means an effluent limitation on those pollutants or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of available information, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in such organisms or their offspring;

(42) "Variance" means an authorization issued to a person by the commissioner that would allow that person to cause a water quality standard to be exceeded for a limited time period without changing the standard;

(43) "Watercourse" means a man-made or natural hydrologic feature with a defined linear channel that discretely conveys flowing water, as opposed to sheet-flow;

(44) "Waters" means any and all water, public or private, on or beneath the surface of the ground, that are contained within, flow through, or border upon Tennessee or any portion thereof, except those bodies of water confined to and retained within the limits of private property in single ownership that do not combine or effect a junction with natural surface or underground waters; and

(45) "Wet weather conveyance" means, notwithstanding any other law or rule to the contrary, man-made or natural watercourses, including natural watercourses that have been modified by channelization:

(A) That flow only in direct response to precipitation runoff in their immediate locality;

(B) Whose channels are at all times above the groundwater table;

(C) That are not suitable for drinking water supplies; and

(D) In which hydrological and biological analyses indicate that, under normal weather conditions, due to naturally occurring ephemeral or low flow there is not sufficient water to support fish, or multiple populations of obligate lotic aquatic organisms whose life cycle includes an aquatic phase of at least two (2) months.

#### **69-3-105. Duties and authority of the board.**

(a)(1) The board has and shall exercise the power, duty, and responsibility to establish and adopt standards of quality for all waters of the state.

(2) The general assembly recognizes that, due to various factors, no single standard of quality and purity is applicable to all waters of the state or to different segments of the same waters. It also recognizes the suitability of certain geologic formations for the placement of fluids and other substances through underground injection; provided, that adequate protection can be afforded the geologic formations. The board shall classify all waters of the state and adopt water quality standards pursuant to such classifications. Such classifications shall be made in accordance with the declaration of policy and purpose in § 69-3-102. In preparing the classification of waters and the standards of quality mentioned above, the board shall give consideration to:

(A) The size, depth, surface area covered, volume, direction and rate of flow, stream gradient, and temperature of the water;

(B) The character of the land bordering, overlying or underlying the waters of the state and its particular suitability for particular uses, with

a view to conserving the value of that land, encouraging the most appropriate use of the same for economic, residential, agricultural, industrial, recreational and conservation purposes;

(C) The past, present, and potential uses of the waters for transportation, domestic and industrial consumption, recreation, fishing and fish culture, fire prevention, the disposal of sewage, industrial and other wastes, and other possible uses.

(3) The state water quality plan provided for in subsection (e) shall contain standards of quality and purity for each of the various classes of water in accordance with the best interests of the public. In preparing such standards, the board shall give due consideration to all physical, chemical, biological, bacteriological, or radiological properties that may be necessary for preserving the quality and purity of the waters of the state.

(4) The board may amend and revise such standards and classifications, including revisions to improve and upgrade the quality of water.

(b) The board has and shall exercise the power, duty, and responsibility to adopt, modify, repeal, promulgate after due notice and enforce rules and regulations that the board deems necessary for the proper administration of this part, the prevention, control, and abatement of pollution, or the modification of classifications and the upgrading of the standards of quality in accordance with subsection (a).

(c) The board has and shall exercise the power, duty, and responsibility to adopt, modify, repeal, and promulgate, after due notice, all necessary rules and regulations for the purpose of controlling the discharge of sewage, other wastes, and other substances from any boats.

(d) Prior to classifying or reclassifying waters of the state, or adopting, amending, or revising standards of quality for waters of the state, or promulgating, adopting, modifying, or repealing rules and regulations, or adopting, amending, or revising water quality plans, or area-wide waste treatment plans, the board shall conduct, or cause to be conducted, public hearings in connection therewith. Notice of any public hearing shall be given not less than thirty (30) days before the date of such hearing and shall state the date, time, and place of hearing, and the subject of the hearing. Any such notice shall be published at least once in one (1) newspaper of general public circulation circulated within the area of the state in which the water affected is located. Any person within the area of the state in which the water affected is located may contact the board and request to be placed on a notification registry, which includes such person's full name, mailing address, and telephone number. The board shall notify in writing all persons on such notification registry as to the date, time, and place of hearing, and the subject of the hearing, ten (10) days before the hearing. Any person who desires to be heard relative to water quality matters at any such public hearing shall give notice thereof in writing to the board on or before the first date set for the hearing. The board is authorized to set reasonable time limits for the oral presentation of views by any person at any such public hearing.

(e)(1) The board has and shall exercise the power, duty, and responsibility to proceed without delay to formulate and adopt a state water quality plan, which shall consist of the following:

(A) Water quality standards as outlined in subsection (a);

(B) Water quality objectives for planning and operation of water resource development projects, for water quality control activities, and for

the improvement of existing water quality;

(C) Other principles and guidelines deemed essential by the board of water quality, oil and gas; and

(D) A program of implementation for those waters that do not presently meet established water quality standards.

(2) The state water quality plan shall be reviewed at least biennially and may be revised. During the process of formulating or revising the state water quality plan, the board shall consult with and carefully evaluate the recommendations of concerned federal, state, and local agencies.

(f) The board has and shall exercise the power, duty, and responsibility to:

(1) Hear appeals as specified in subsection (i) from administrative judges' orders assessing penalties or damages, or issuing, denying, revoking or modifying a permit; and

(2) Affirm, modify, or revoke such orders, as specified in subsection (i).

(g) The board has and shall exercise the power, duty, and responsibility to require the technical secretary to carry out surveys, research, and investigations into all aspects of water use and water quality.

(h)(1) The board has and shall exercise the power, duty, and responsibility to adopt, modify, repeal, and promulgate all necessary rules and regulations for the purpose of establishing and administering a comprehensive permit program that will enable the department of environment and conservation to be designated by the United States environmental protection agency as authorized to issue permits under the national pollutant discharge elimination system (NPDES) established by § 402 of the Federal Water Pollution Control Act, P.L. 92-500, codified in 33 U.S.C. § 1342.

(2) Such rules and regulations shall include provisions for:

(A) Forms and procedures for permit applications;

(B) Public notice and opportunity for public hearing on permit applications;

(C) Promulgation and application in permits of effluent standards and limitations, water quality standards, schedules of compliance, and such other terms and conditions as are necessary to implement this part;

(D) Monitoring and inspecting effluent discharges or treatment facilities and recording and reporting the results;

(E) Enforcement of this part, rules and regulations promulgated under it, and the terms and conditions of permits; and

(F) Adoption and enforcement of permits that have been issued by the United States environmental protection agency pursuant to § 402 of the Federal Water Pollution Control Act, P.L. 92-500, codified in 33 U.S.C. § 1342.

(i) A petition for permit appeal may be filed by the permit applicant or by any aggrieved person who participated in the public comment period or gave testimony at a formal public hearing whose appeal is based upon any of the issues that were provided to the commissioner in writing during the public comment period or in testimony at a formal public hearing on the permit application. Additionally, for those permits for which the department gives public notice of a draft permit, any permit applicant or aggrieved person may base a permit appeal on any material change to conditions in the final permit from those in the draft, unless the material change has been subject to additional opportunity for public comment. Any petition for permit appeal under this subsection (i) shall be filed with the board within thirty (30) days

after public notice of the commissioner's decision to issue or deny the permit. Notwithstanding § 4-5-223 or § 69-3-118(a), or any other law to the contrary, this subsection (i) and the established procedures of Tennessee's antidegradation statement, found in the rules promulgated by the department, shall be the exclusive means for obtaining administrative review of the commissioner's issuance or denial of a permit. When such a petition is timely filed, the procedure for conducting the contested case shall be in accordance with § 69-3-110(a).

(j) The board has and shall exercise the power, duty, and responsibility to adopt, modify, repeal, and promulgate all necessary rules and regulations that the board deems necessary relating to the underground placement of fluids and other substances that do or may affect the waters of the state.

(k)(1) Notwithstanding any other provisions of this title to the contrary, waters that are in areas of swamped-out bottomland hardwoods or swamped-out cropland shall be classified as protective of wildlife and humans that may come into contact with them, and shall maintain standards applicable to all downstream waters, but shall not be classified for the protection of fish and aquatic life.

(2) As used in this subsection (k):

(A) "Swamped-out bottomland hardwood" means an area subject to inundation or ponding of surface water that has resulted, or is resulting, in timber mortality or stress. The term does not include areas with a dominance of cypress or tupelo gum trees or areas in which the majority of the timber died prior to 1970; and

(B) "Swamped-out cropland" means an area that was previously in row crop cultivation or pasture, but can no longer be used for such purpose due to inundation or ponding of surface water. "Swamped-out cropland" does not include wetland areas that have not been cultivated or in pasture since 1970 because of inundation or ponding of surface water.

(l) The board has and shall exercise the power to adopt rules creating a system of incentives for alternatives to discharges to surface waters, such as land application and beneficial reuse of the wastewater.

(m) The commissioner shall develop and submit to the board proposed rules necessary for accurate and consistent wet weather conveyance determinations. These rules shall include at a minimum:

(1) Standard procedures for making stream and wet weather conveyance determinations that take into consideration biology, geology, geomorphology, precipitation, hydrology and other scientifically based principles; and

(2) A certification program for department staff and other persons who wish to become certified hydrologic professionals.

### **69-3-110. Hearings.**

(a) Any hearing brought before the board pursuant to § 69-3-105(i), § 69-3-109, or § 69-3-118 shall be conducted as a contested case. The hearing shall be heard before an administrative judge sitting alone pursuant to §§ 4-5-301(a)(2) and 4-5-314(b), unless settled by the parties. The administrative judge to whom the case has been assigned shall convene the parties for a scheduling conference within thirty (30) days of the date the petition is filed. The scheduling order for the contested case issued by the administrative judge shall establish a schedule that results in a hearing being completed within one

hundred eighty (180) days of the scheduling conference, unless the parties agree to a longer time or the administrative judge allows otherwise for good cause shown, and an initial order being issued within sixty (60) days of completion of the record of the hearing. The administrative judge's initial order, together with any earlier orders issued by the administrative judge, shall become final unless appealed to the board by the commissioner or other party within thirty (30) days of entry of the initial order or, unless the board passes a motion to review the initial order pursuant to § 4-5-315, within the longer of thirty (30) days or seven (7) days after the first board meeting to occur after entry of the initial order. Upon appeal to the board by a party, or upon passage of a motion of the board to review the administrative judge's initial order, the board shall afford each party an opportunity to present briefs, shall review the record and allow each party an opportunity to present oral argument. If appealed to the board, the review of the administrative judge's initial order shall be limited to the record, but shall be de novo with no presumption of correctness. In such appeals, the board shall thereafter render a final order, in accordance with § 4-5-314, affirming, modifying, remanding, or vacating the administrative judge's order. A final order rendered pursuant to this section is effective upon its entry, except as provided in § 4-5-320(b) unless a later effective date is stated therein. A petition to stay the effective date of a final order may be filed under § 4-5-316. A petition for reconsideration of a final order may be filed pursuant to § 4-5-317. Judicial review of a final order may be sought by filing a petition for review in accordance with § 4-5-322. An order of an administrative judge that becomes final in the absence of an appeal or review by the board shall be deemed to be a decision of the board in that case for purposes of the standard of review by a court; however, in other matters before the board, it may be considered but shall not be binding on the board.

(b) In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the chancery court of Davidson County, or the chancery court of the county in which the hearing is conducted, shall have jurisdiction upon application of the board or commissioner to issue an order requiring such person to appear and testify or produce evidence as the case may require, and any failure to obey such order of the court may be punished by such court as contempt.

(c) [Deleted by 2013 amendment, effective July 1, 2013.]

(d) The decision of the board shall become final and binding on all parties unless appealed to the courts as provided in § 69-3-111.

(e) Any person to whom an emergency order is directed pursuant to § 69-3-109(b) shall comply immediately, but on petition to the board shall be afforded a hearing as soon as possible, but in no case shall such hearing be held later than three (3) days from the receipt of such petition by the board.

(f) Any hearing required by this section or chapter shall be conducted in accordance with § 13-18-114 when the hearing involves a major energy project, as defined by § 13-18-102.

### **69-3-111. Appeals.**

An appeal may be taken from any final order or other final determination of the board by any party, with the exception of the department. An appeal from a final order or other final determination of the board is instituted by filing a petition for review in the chancery court of Davidson County, or in the chancery

court of the county in which the violation of this chapter occurred. The alleged violator shall elect in which court to file the petition for review.

**69-3-142. Annual reports by commissioner.**

(a) The commissioner shall submit by January 31 of each year to the chair of the energy, agriculture and natural resources committee of the senate and the chair of the agriculture and natural resources committee of the house of representatives the following information:

(1) The number of enforcement orders, including directors' orders and commissioner's orders, issued pursuant to § 69-3-109(a)(1) and (2) during the prior year, listed by the county in which the violation occurred;

(2) The number of orders that become final pursuant to § 69-3-109(a)(3) during the prior year, including the average civil penalties and damages assessed by the department from these orders;

(3) The number of final orders and consent orders by the board that become final pursuant to § 69-3-110(d), including the average civil penalties and damages assessed by the department from these decisions during the prior year; and

(4) The number of complaints filed in any chancery court of this state appealing a decision by the board, pursuant to § 69-3-111, and any judicial proceedings initiated by the commissioner and the attorney general and reporter, pursuant to § 69-3-117, during the prior year.

(b) The commissioner shall submit by January 31 of each year to the chair of the energy, agriculture and natural resources committee of the senate and the chair of the agriculture and natural resources committee of the house of representatives the following information:

(1) The number of individual permit applications made during the prior year, listed by county in which the activity sought to be permitted was to occur;

(2) The average length of time, in days, between date of individual permit application and the date permit applications are deemed complete by the department during the prior year; and

(3) The average length of time, in days, between date of individual permit application and the date the department grants or denies the permit application during the prior year.

(c) For purposes of this section, "permit application" and "permit applications" shall be defined to include applications for individual permits issued pursuant to § 69-3-108.

(d) The commissioner shall submit by January 31 of each year to the chair of the energy, agriculture and natural resources committee of the senate and the chair of the agriculture and natural resources committee of the house of representatives a brief report on the status of the implementation of a secure web portal for the submittal of online permit applications. This service for electronic submittal of permit applications will comply with the federal guidelines contained in 40 CFR Ch. I, Subch. A, Part 3, Cross-Media Electronic Reporting Rule (CROMERR). This reporting requirement will terminate after a secure online permit application submittal system is implemented.

**69-3-148. Municipal separate storm sewer systems becoming qualified local programs.**

(a) The department may establish a program under which municipal separate storm sewer systems may become qualified local programs allowing for the streamlining of permits for construction activity as provided in this section.

(b) The department may review and approve applications from municipal separate storm sewer systems to become qualified local programs. The requirements for being a qualified local program shall be those required by federal regulation together with a system acceptable to the department for sharing information as to the construction sites authorized by the qualified local program.

(c) The department may incorporate by reference the requirements of a qualified local program for construction activity in its general permit.

(d) An operator of a construction site located within the jurisdiction of a qualified local program under subsection (b) who has obtained a notice of coverage from such program shall be authorized under the department's general permit for storm water associated with construction activity for that site and shall not have to submit any of the following to the department:

- (1) Notice of intent to seek coverage under a storm water construction permit;
- (2) Storm water pollution prevention plan;
- (3) Storm water construction permit fee; or
- (4) Notice of termination.

**69-3-302. Publication of final orders by the board or an administrative judge.**

Final orders by the board or an administrative judge shall be published on the department web site within five (5) business days, in addition to other publication required by law.

**70-1-201. Creation — Appointment of members — Terms.**

(a) An independent and separate administrative board of conservation for game, fish and wildlife of the state is created, to be known and referred to as the Tennessee fish and wildlife commission, hereinafter referred to as the "fish and wildlife commission" or the "commission," to consist of thirteen (13) citizens of this state, which citizens shall be well informed on the subject of the conservation of game animals, birds and fish in this state. Nine (9) of these citizens shall be appointed by the governor, two (2) shall be appointed by the speaker of the senate, and two (2) shall be appointed by the speaker of the house of representatives, each to be appointed within the period provided in this section. In making appointments to the fish and wildlife commission, the governor and the speakers shall strive to ensure that at least one (1) person serving on the commission is sixty (60) years of age or older, at least one (1) person serving on the commission is a member of a racial minority, and at least two (2) persons serving on the commission are female.

(b)(1) Except as otherwise provided in this subsection (b), each member shall be confirmed by the agriculture and natural resources committee of the house of representatives and the energy, agriculture and natural resources committee of the senate and by joint resolution of the general assembly prior

to beginning a term of office.

(2) If the general assembly is not in session at the time a member is appointed to fill a vacancy resulting from the expiration of a term, the member of the commission whose term has expired shall serve until a new appointee is confirmed as provided in subdivision (b)(1).

(3) If the general assembly is not in session at the time a member is appointed to fill a vacancy not resulting from the expiration of a term, the new appointee shall serve for the term appointed unless such appointment is not confirmed within sixty (60) calendar days after the general assembly next convenes in regular session following such appointment.

(4) If the general assembly is not in session when initial appointments are made, all initial appointments shall serve the terms prescribed pursuant to subdivision (c)(1), unless such appointments are not confirmed within sixty (60) calendar days after the general assembly next convenes in regular session following such appointments.

(c)(1) The entire membership of the wildlife resources commission shall be vacated and shall be replaced by new appointments made to the fish and wildlife commission pursuant to this subsection (c). In order to stagger the terms of the newly appointed commission members, initial appointments shall be made as follows:

(A) Three (3) of the governor's initial appointments, one (1) from each grand division of the state as provided in § 70-1-204(a), and one (1) initial appointment by each speaker shall be made for a term of two (2) years and eight (8) months;

(B) Three (3) of the governor's initial appointments, one (1) from each grand division of the state as provided in § 70-1-204(a), and one (1) initial appointment by each speaker shall be made for a term of four (4) years and eight (8) months; and

(C) Three (3) of the governor's initial appointments, one (1) from each grand division of the state as provided in § 70-1-204(a), shall be made for a term of six (6) years and eight (8) months.

(2) For purpose of calculating terms, the initial term of office of each commission member shall begin on July 1, 2012.

(3) At the conclusion of the initial terms, each regular term of a commission member appointed by a speaker shall be four (4) years and each regular term of a commission member appointed by the governor shall be six (6) years. For purpose of calculating regular terms, each term shall begin on March 1 and shall expire on the last day of February.

(4) No commission member shall serve consecutive terms. For the purposes of this subdivision (c)(4), a commission member shall be considered as having served a term if such member has served more than two (2) years of an initial term, regular term or unexpired term on the fish and wildlife commission.

(5) A vacancy on the commission shall be filled by the appointing authority making the original appointment for the remainder of any unexpired term or, if a term has expired, for a regular term.

#### **70-1-206. Duties and functions.**

(a) The fish and wildlife commission is directed and authorized to perform the following duties and functions:

- (1) Appoint and dismiss the executive director;
  - (2) Approve the budget pursuant to § 70-1-306;
  - (3) Promulgate necessary rules, regulations, and proclamations as required under this title and title 69, chapter 9. The commission is also authorized to promulgate rules and regulations to permit a licensed trapper to release small game animals in counties contiguous to the counties where the animals were trapped;
  - (4) Establish objectives within the state policy that will enable the wildlife resources agency to develop, manage and maintain sound programs of hunting, fishing, trapping and other wildlife related outdoor recreational activities;
  - (5) Establish the salary of the executive director of the wildlife resources agency;
  - (6) Promulgate rules and regulations for the administration of the Reelfoot Lake natural area, as provided in title 11, chapter 14, part 1; and
  - (7) Promulgate rules and regulations to adjust fees for licenses and permits in this title and to establish new hunting, fishing and trapping licenses and permits as deemed appropriate along with necessary fees. Adjusting or establishing fees shall be in such amounts as may be necessary to administer the wildlife laws; provided, that the percentage increase in total revenue from a license package containing one (1) or more licenses or permits, or both, shall not exceed the percent of increase in the average consumer price index, all items-city average, as published by the United States department of labor, bureau of labor statistics, on the first day of March 1990, or, in the case of any permit, license or permit/license package fee adjustment after the initial adjustment under this subdivision (a)(7), the difference in the average consumer price index, all items-city average between the dates of one (1) adjustment and any subsequent adjustment; provided further, however, that individual fee adjustment amounts may be rounded up to the next dollar amount. All such fees, and any adjustments to the fees, shall be deposited in the wildlife resources fund and shall be expended solely for the administration and operation of the agency's programs and responsibilities authorized pursuant to this chapter. Further, the commission shall report actions taken on permits, licenses, and fees to be assessed following the promulgation of the proposed rules and regulations to the energy, agriculture and natural resources committee of the senate and to the agriculture and natural resources committee of the house of representatives.
- (b) The fish and wildlife commission shall become knowledgeable in and familiar with the special needs of handicapped and disabled veterans.

**70-2-226. Permits for use of Sundquist wildlife management area by certain residents.**

- (a) Notwithstanding § 70-2-225 or any other provision of this title to the contrary, persons residing either within the boundaries of the Sundquist wildlife management area or on property physically contiguous to such area on July 1, 2004, shall be issued a user permit by the Tennessee wildlife resources agency (TWRA) for horseback riding, bicycling, and off highway vehicle use. Application must be made to the TWRA on the form provided by the agency and such proof of residency provided as specified by the agency within ninety

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(90) days of June 7, 2004.

(b) Subsection (a) shall not apply to persons who purchase, inherit, or reside on property within or physically contiguous to the Sundquist wildlife management area after July 1, 2004.

(c) The estimated cost of this section shall be absorbed out of the existing resources of the TWRA.

**70-5-101. Establishment of hunting areas, refuges, and wildlife management areas — Prohibited acts.**

(a) The wildlife resources agency has the power and authority to establish, with the consent of the property owner, public hunting areas, refuges, or wildlife management areas, wherever it deems necessary or feasible for the protection, propagation and management of wildlife, or any of these.

(b)(1) It is unlawful to hunt, kill, destroy, trap, ensnare, or molest in any manner any wildlife within such areas or to trespass on such areas, except as provided by proclamation or rule or regulation. Such areas shall be posted in conspicuous places. The executive director is authorized to issue permits for the destruction of predatory wildlife within such areas.

(2) A violation of subdivision (b)(1) is a Class C misdemeanor.

(c) Notwithstanding subsection (b), a person with a handgun carry permit pursuant to § 39-17-1351 may possess a handgun the entire year while on the premises of any refuge, public hunting area or wildlife management area or, to the extent permitted by federal law, national forest land maintained by the state. Nothing in this subsection (c) shall authorize a person to use any handgun to hunt unless the person is in full compliance with all wildlife laws, rules and regulations.

(d) Nothing in this section shall authorize a person with a hand gun carry permit to possess such weapon in the portion of any refuge, public hunting area or wildlife management area that is within the boundaries of a state park or state natural area unless otherwise authorized in accordance with state law.

(e) Nothing in this section shall authorize a person to access any area unless the person is in full compliance with all current wildlife laws, rules, proclamations and regulations.

(f)(1) Subject to existing rights, lands managed by the wildlife resources agency shall be open to access and use for recreational hunting and fishing, except as limited by the agency for reasons of public safety, homeland security, or as otherwise limited by law.

(2) For the purposes of this subsection (f), lands managed by the agency include lands owned by the agency, as well as lands owned by other public entities for which the agency regulates hunting and fishing.

(3) The agency shall exercise its authority to manage lands in a manner to support, promote and enhance recreational hunting and fishing opportunities to the extent authorized by law.

(4) The agency is not required to give preference to hunting and fishing over other uses or priorities established by state law.

(5) Agency decisions and actions shall not result in any net loss of any acreage available for hunting and fishing opportunities.

(6) Prior to January 1, 2008, and each January 1 thereafter, the agency shall submit to the chair of the agriculture and natural resources committee of the house of representatives and the chair of the energy, agriculture and

natural resources committee of the senate a written report containing:

(A) The estimated acreage managed by the agency that has been closed to recreational hunting and fishing during the previous fiscal year and the reasons for the closures;

(B) The estimated acreage managed by the agency that was opened to recreational hunting and fishing to compensate for the estimated acreage that was closed during the previous fiscal year; and

(C) The estimated acreage of new public hunting and fishing lands added to the existing hunting and fishing lands base since the previous report.

(7) When lands owned by the agency are closed to hunting or fishing, the agency shall mitigate the closure by opening new lands to be used for the same purpose, within twelve (12) months of closure. The managed lands to be opened shall be at least equal to the acreage of lands closed by the agency and shall be located in the same grand division of the state in which the closed lands are located. The agency shall not be responsible for mitigation of land closures when lands not owned by the agency are removed from the agency's control or closed to hunting and fishing by the owning entity.

(8) The agency is exempt from this subsection (c) when closing or utilizing acreages of public hunting and fishing lands for the following purposes:

(A) Firearm and archery shooting ranges;

(B) Road development and maintenance;

(C) Service buildings;

(D) Administrative buildings;

(E) Creation of agency lakes;

(F) Agency project-related parking;

(G) Establishment of wildlife refuges; and

(H) Development and maintenance of a proposed or existing greenway connecting Davidson, Wilson and Rutherford counties on land that is owned by the Nashville district of the United States army corps of engineers.

(9) This subsection (f) shall have no effect on the agency's authority or ability to regulate hunting and fishing, including its ability to set season times and lengths, and bag limits.

#### **71-1-105. Powers and duties.**

(a) The department is charged with the administration or supervision of all of the public welfare activities of the state as provided in this section. The department shall:

(1) Administer or supervise all functions of the federal Social Security Act, compiled in 42 U.S.C., established or to be established in Tennessee that may be assigned to it by law, regulation or executive order;

(2) Cooperate with the federal government or its agencies or instrumentalities, in establishing, extending, strengthening or reforming services to assist persons and families in need of such services from the state of Tennessee;

(3) Promote the unified development of the institutional and noninstitutional agencies subject to its jurisdiction, including the determination of all matters of general policy and the control of the administration of each of the institutional or noninstitutional agencies in the department, so that each institutional or noninstitutional agency shall perform its function as an

integral part of the general system;

(4) Establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications of the department. The use of such records, papers, files and communications by any other agency or department of the government to which they may be furnished shall be limited to the purpose for which they are furnished and by the provisions of the law by which they may be furnished;

(5)(A) License or approve, and supervise, adult day care centers and child care agencies as defined in chapter 2, part 4, and chapter 3, part 5 of this title, and to promulgate any regulations it deems necessary to carry out the licensing laws;

(B) Establish criteria for the approval of persons or entities who receive any state or federal funds for the provision of care for adults or children whether those persons or entities are licensed or approved as provided in chapter 2, part 4 or chapter 3, part 5, of this title, or whether they are otherwise unlicensed, and, if determined by the department to be necessary, provide for such criteria in regulations promulgated pursuant to the Uniform Administrative Procedures Act, compiled at title 4, chapter 5, part 2; and

(C) Utilize any state, federal, local or private funding to provide for any child care or adult day care services or training that it deems necessary to promote the welfare of children and adults or that is required or permitted by state or federal law or regulations, and to provide such services or training directly or by contract with any public or private entities;

(6) Promote and employ the use of such measures as are designed to restore persons receiving assistance or services from the department to a condition of self-support in the community and pursue the preventive aspects of its work, including providing, to the extent possible, foster care for adults who are unable to maintain an independent living arrangement, and such other services to those liable to become destitute or handicapped as will prevent their becoming or remaining public charges;

(7) Study the causes of economic dependency or rehabilitative service requirements for persons in need of economic support or rehabilitative services in Tennessee and promote efficient methods for assisting persons in need of such support or services;

(8) Cooperate with the commissioner of social security, and with any other agency or instrumentality of the federal government in any reasonable manner that may be necessary to qualify for federal aid for assistance to persons who are entitled to assistance under the provisions of the Social Security Act, except as otherwise provided by subdivision (a)(1), and in conformity with the provisions of this part, including the making of such reports, in such form and containing such information as the commissioner of social security or any other agency or instrumentality of the federal government may, from time to time, require and comply with such requirements as such commissioner, agency, or instrumentality may, from time to time, find necessary to assure the correctness and verification of such reports;

(9) Receive and expend as provided by law any public and private donations, not provided for by § 71-1-113, and the department may expend a reasonable proportion of any such donation for administrative purposes;

(10) Assist and cooperate with other departments, agencies, instrumentalities, and institutions of the state and federal governments, when so requested, in performing services in conformity with the purposes of this part;

(11) Act in cooperation with the federal government in welfare matters of mutual concern in conformity with the provisions of this part and in the administration of any federal funds granted to this state or any state appropriations to aid in the furtherance of any such functions of the state government, including relief and assistance of needy citizens;

(12) Make such rules and regulations and take such action as may be deemed necessary or desirable to carry out this part and that are not inconsistent with this part;

(13) Administer such additional public welfare functions as are hereby or may be vested in it by law pursuant to this part;

(14) Be authorized to license blind persons to operate vending stands in state and county buildings; provided that, in the opinion of the director of vocational rehabilitation and the custodian of such building or buildings, a suitable place may be found for the location of such stand or stands to be operated in accordance with the Randolph-Sheppard Vending Stand Act of June 20, 1936, chapter 638, 49 Stat. 1559, compiled in 20 U.S.C. § 107 et seq., or amendments to that act;

(15) Enforce the provisions of Title IV-D of the Social Security Act, compiled in 42 U.S.C. § 651 et seq., relative to child and spousal support and establishment of paternity and to contract with public or private entities to provide any services necessary to carry out such provisions; and

(16) Conduct investigations, which shall include, but not be limited to, investigation into the existence of:

(A) Trafficking in, or fraud involving, the food assistance program administered by the department pursuant to chapter 5, part 3 of this title;

(B) Fraud, abuse, theft, misappropriation, or misuse of property, funds, or services by any person or entity in any program administered by the department; and

(C) Misconduct by any employee, contractor, or agent of the department concerning or related to the operation of any department program or any laws, regulations or policies governing the department's operations.

(b) Notwithstanding any state law or regulation to the contrary, the department may provide low-income energy assistance at any percentage of the federal income poverty level that is permitted by federal law.

#### **71-1-126. Review of state medicaid program.**

The commissioner of health is hereby directed to begin the process of reviewing, for the purposes of reforming, the state's medicaid program. Such review shall include reviewing managed care programs and applying for needed federal waivers as well as the development of plans for consideration by the governor and the general assembly outlining options the state has under federal law concerning, but not limited to, eligibility, scope and duration of services, optional services, and rate structures. In conducting this review, the commissioner of health is to report no less than quarterly to the chair of the finance, ways and means committee of the senate, the chair of the health and welfare committee of the senate, the chair of the finance, ways and means

committee of the house of representatives, the chair of the health committee of the house of representatives, and to such other legislative committees that request such information and to the office of legislative budget analysis. The governor is hereby authorized to appoint committees, as the governor deems appropriate, to assist in the overall review of the medicaid program, it being the legislative intent that the state of Tennessee develop a medicaid program that can continue to provide the necessary health care services to those appropriately in need at a cost that can be supported within existing sources of revenue.

**71-1-134. License, certification or registration — Notifications — Prerequisites — Web site — Electronic notifications.**

(a) The department and each board, commission, agency or other governmental entity created pursuant to this title shall notify each applicant for a professional or occupational license, certification or registration from the department, board, commission, agency or other governmental entity where to obtain a copy of any statutes, rules, guidelines, and policies setting forth the prerequisites for the license, certification or registration and shall, upon request, make available to the applicant a copy of the statutes, rules, guidelines, and policies.

(b) The department and each board, commission, agency or other governmental entity created pursuant to this title shall notify each holder of a professional or occupational license, certification or registration from the board, commission, agency or other governmental entity of changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies, and guidelines, upon the issuance and upon each renewal of a holder's license, certification or registration.

(c) The department and each board, commission, agency or other governmental entity created pursuant to this title shall establish and maintain a link or links on the entity's web site to the statutes, rules, policies, and guidelines that are implemented or enforced by the entity and that impact an applicant for, or a holder of, a professional or occupational license, certification, or registration from the entity.

(d)(1) The department and each board, commission, agency, or other governmental entity created pursuant to this title shall allow each holder of a professional or occupational license, certification or registration from the department, board, commission, agency or other governmental entity to have the option of being notified by electronic mail of:

(A) Renewals of the holder's license, certification or registration;

(B) Any fee increases;

(C) Any changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies and guidelines; and

(D) Any meeting where changes in rules or fees are on the agenda. For purposes of this subdivision (d)(1)(D), the electronic notice shall be at least forty-five (45) days in advance of the meeting, unless it is an emergency meeting then the notice shall be sent as soon as is practicable.

(2) The department and each board, commission, agency or other governmental entity created pursuant to this title shall notify each holder of a

license, certification or registration of the availability of receiving electronic notices pursuant to subdivision (d)(1) upon issuance or renewal of the holder's license, certification or registration.

**71-1-135. Victims of human trafficking.**

(a) The commissioner of human services shall establish a plan for the delivery of services to victims of human trafficking after consultation with the following departments:

- (1) Department of children's services;
- (2) Department of health;
- (3) Department of intellectual and developmental disabilities;
- (4) Department of mental health and substance abuse services; and
- (5) Tennessee bureau of investigation.

(b) The plan developed under subsection (a) shall include, but not be limited to, provisions to:

- (1) Identify victims of human trafficking in this state;
- (2) Identify community-based services for victims of human trafficking;
- (3) Assist victims of human trafficking through the provision of information regarding access to benefits and services to which those victims may be entitled;
- (4) Coordinate delivery of services and information concerning health care, mental health care, legal services, housing, job training, education and victim's compensation funds;
- (5) Prepare and disseminate educational materials and provide training programs to increase awareness of human trafficking and the services available to victims; and
- (6) Assist victims of human trafficking with family reunification.

(c) In addition to the requirements of subsection (b), the plan shall include a timeline for which the department anticipates the state would be capable of implementing the plan, along with anticipated rates of assistance to victims of human trafficking, cost of implementation, an itemized rationale for both, and any other factor that the department opines will significantly contribute to or detract from the success of implementing the plan.

(d) By July 1, 2013, the department of human services shall transmit a copy of the plan and issue a report to the chair of the judiciary committee of the senate and the chair of the criminal justice committee of the house of representatives.

**71-2-105. Powers and duties of commission.**

(a) The commission shall:

- (1) Meet as necessary to transact business; provided, that meetings shall be held at least quarterly;
- (2) Promulgate bylaws to provide for the election of officers, establishment of committees, meetings, and other matters relating to commission functions;
- (3) Elect a chair, a vice chair, and three (3) representatives, one (1) from each of the three (3) grand divisions, who shall comprise the executive committee to function between quarterly meetings;
- (4) Allocate funds for projects and programs for older persons and disabled adults, subject to the limits of the appropriation by the general

assembly and funds available or received from the federal government for such projects and programs. The commission is authorized to accept funds from the federal government and private sources and to administer such funds to achieve its purposes pursuant to § 71-2-104(a);

(5) Serve as an advocate within government and in the community for older persons and disabled adults in Tennessee;

(6) Designate planning and service areas and area agencies on aging in accordance with the Older Americans Act, compiled in 42 U.S.C. § 3001 et seq., and federal regulations promulgated under the Older Americans Act. The commission shall review the boundaries of the planning and service areas from time to time and shall change them as necessary to comply with the Older Americans Act or to reflect changes in governmental boundaries or major changes in population distribution;

(7) Adopt the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the purpose of administrative hearings and rulemaking as required under this part;

(8) Receive the cooperation of other state departments and agencies in carrying out the policies and objectives of this part; and

(9) [Deleted by 2012 amendment.]

(10) Enter into such contracts and make such grants within the limits of appropriated funds, as are necessary or appropriate under this part, and in a manner consistent with state or federal law.

(b) In addition to the powers, responsibilities or duties granted to the commission elsewhere in this part, the commission may:

(1) Promulgate, amend, revise, and rescind such rules as are necessary and appropriate to carry out the purposes of this part in accordance with the Uniform Administrative Procedures Act;

(2) Create subcommittees to undertake such special studies as it shall authorize and include in such subcommittees persons qualified in any field of activity relating to aging or disability, or both;

(3) Advise the governor and the heads of state departments and agencies regarding policies, programs, services, allocation of funds, and the needs of older persons and disabled adults in Tennessee and make recommendations for legislative action to the governor and to the general assembly;

(4) Hold hearings, conduct research and other appropriate activities to determine the needs of older persons and disabled adults in the state, including particularly, but not limited to, their needs for health and social services, and to determine the existing services and facilities, private and public, available to meet those needs;

(5) Develop and conduct, alone or in coordination with other agencies, research and demonstration projects and programs that provide training, education, and services to advance the interests of older persons and disabled adults; and

(6) Stimulate more effective use of existing resources and services for older persons and disabled adults and develop programs, opportunities and services that are not otherwise provided for older persons and disabled adults, with the aim of developing a comprehensive and coordinated system for the delivery of health and social services.

(c)(1) In addition to the powers, responsibilities and duties granted to the commission, the commission shall initiate an outreach program to provide medicare-eligible Tennesseans information and education relative to obtain-

ing prescription drugs at a discounted cost, and obtaining prescription drugs through programs based upon an individual's income. Education and information shall include, but not be limited to the availability of:

(A) Prescription drugs through patient assistance programs offered by pharmaceutical manufacturers;

(B) Prescription drug coverage for individuals who are eligible for TennCare, veterans administration programs, medicare supplemental policies and any other program that provides such coverage; and

(C) Prescription discount cards or information on how to access other programs that provide discounted prescription drugs to eligible participants.

(2) Minimally, such outreach shall include:

(A) Assistance in the implementation of a program to assist medicare-eligible persons in processing the necessary documents in order to participate in the programs in subdivision (c)(1);

(B) A toll-free number manned during business hours to provide information regarding the programs outlined in subdivision (c)(1);

(C) A web site or referral to web site links that provide information regarding the programs outlined in subdivision (c)(1); and

(D) Presentations to senior groups regarding the availability of the programs outlined in subdivision (c)(1).

(3) The commission shall implement the outreach program within the commission's available resources.

(4) The commission may delegate any or all such responsibilities to a private or public contractor.

(5) The commission is authorized to make application for grants to fund programs set out in subdivision (c)(1) above.

(6) The commission may adopt rules in accordance with the Uniform Administrative Procedures Act, to implement this subsection (c).

(7) The commission shall file a report with the commerce and labor committee of the senate and the health committee of the house of representatives by February 15, 2003, and annually thereafter by February 15. The report shall include, but not be limited to:

(A) The pharmacy assistance programs that were available;

(B) The outcome of each program by county and population served;

(C) Which agency, contractor, or personnel provided the services;

(D) The number and location of presentations made to senior groups; and

(E) The commission's opinion as to the effectiveness of the program and any recommendations for revision, continuation, expansion or termination of such outreach program.

(d) Nothing in this part or chapter 5, part 14 of this title shall authorize the commission to exercise any control or authority over any aspect of the administration of programs for home and community based long-term care that are operating on the basis of federal waivers in effect on June 19, 2001.

#### **71-2-403. Review of records and registries — Verification — Exclusion from access to adults.**

(a) A review of the records and registries set forth in subdivisions (a)(1)-(6) shall be conducted for all new employees or for volunteers who are counted in

the staff/adult participant ratio and those volunteers who have unsupervised access to the adult participants in adult day care centers, and for all new department licensing staff who regulate the adult day care licensing program and all new counselors and supervisors providing services in the adult protective services program:

- (1) Criminal background history;
- (2) Juvenile records history available to the Tennessee bureau of investigation (TBI);
- (3) Any available juvenile court records, if determined necessary by the department;
- (4) Vulnerable persons registry pursuant to title 68, chapter 11, part 10;
- (5) State's sex offender registry; and
- (6) Records of indicated perpetrators of abuse or neglect of children or adults maintained by the department of children's services and the department of human services.

(b)(1) Except as otherwise provided in this subdivision (b)(1) and in subsections (c) and (e), and except where the context or intent would otherwise render the language inapplicable to the persons having access to adults in an adult day care center, the procedures, requirements and any other statutory provisions involving the requirements for disclosure forms, the methodology for obtaining and reporting the fingerprint-based criminal and available juvenile histories of a person, the exclusions of persons with a prohibited records history, the appeals processes, the department's authority to allow by rule of the department for exemptions from a verified prohibited history, permissive review procedures and any other consistent procedures, shall be the same for persons subject to this section as those provided in § 71-3-507 for persons having access to children in childcare agencies licensed by the department of human services pursuant to chapter 3, part 5 of this title; provided, that the adult day care center, and not the department, shall be responsible for all of the costs of the fingerprint background checks conducted by the TBI and the federal bureau of investigation for its employees or volunteers subject to this section.

(2) With respect to volunteers, this section applies only to those volunteers who serve as volunteers for more than thirty-six (36) hours in any one (1) calendar year.

(c) The adult day care center may require that the costs of the background check be a part of the application process by a prospective employee or volunteer, or it may pay the costs and recover the costs of the fingerprint-based background checks from the prospective employee following employment. The department shall pay all costs required for its employees subject to the required background reviews.

(d) The TBI shall make any reports of positive matches pursuant to this section in the same manner as provided for any of the processes authorized by § 71-3-507.

(e) Conviction by a criminal court or adjudication by the juvenile court for an offense or a lesser included offense involving the physical, sexual or emotional abuse, neglect, financial exploitation or misuse of funds or theft from any person, or that constitutes conviction or adjudication for an offense involving violence against any person, or conviction of an offense involving the manufacture, sale, possession or distribution of any drug, or a no-contest plea to such offenses, and any pending warrants, indictments, presentments or

petitions for such offenses, or the identification of any person on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, on the state's sex offender registry or identification as a perpetrator of abuse or neglect of children or adults in the records of the department of children's services or department of human services as provided in § 71-3-515 shall disqualify such person from employment with, or from having any access whatsoever to adults in, an adult day care center as defined by this part, and from employment with the department as regulatory staff in the department's adult day care licensing program and service staff in the adult protective services program.

**71-2-412. Rules and regulations.**

(a) The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this part. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) All rules and regulations promulgated to effectuate the purposes of this part shall also be reviewed by the health and welfare committee of the senate and the health committee of the house of representatives.

**71-3-106. [Repealed.]**

**71-3-110. Distribution system.**

The commissioner of human services has the authority to establish a system for distribution of any benefits provided by this part, or under the continued provisions of federal law and regulations as provided under § 71-3-108, by means of electronic benefits transfer system and to contract with public or private entities to provide any services necessary to carry out such provision as the commissioner shall determine is appropriate.

**71-3-126. Restrictions on use of electronic benefits transfer cards by TANF recipients — Reimbursement — Violations and penalties — System for review — Right to hearing — Rules and regulations — Revenues and fines deposited in general fund. [Effective on July 1, 2014.]**

(a) *For the purposes of this section, the term "public assistance benefits" means money or property provided directly or indirectly to eligible persons through the temporary assistance to needy families program.*

(b)(1) *A recipient of public assistance benefits shall not knowingly use an electronic benefits transfer card in:*

(A) *A liquor store as defined in 42 U.S.C. § 608(a)(12)(B)(i);*

(B) *A casino, gambling casino, or gaming establishment as defined in 42 U.S.C. § 608(a)(12)(B)(ii); or*

(C) *An adult cabaret as defined in § 7-51-1102.*

(2) *To the extent permitted by federal law, any person who violates this subsection (b) shall reimburse the department for the purchase;*

(c)(1) *A person or business entity, or any agent or employee of the person or business entity shall not knowingly accept public assistance benefits from an electronic benefits transfer card for the purchase of any goods or services in:*

(A) *A liquor store as defined in 42 U.S.C. § 608(a)(12)(B)(i);*

(B) A casino, gambling casino, or gaming establishment as defined in 42 U.S.C. § 608(a)(12)(B)(ii); or

(C) An adult cabaret as defined in § 7-51-1102.

(2) Any person or business entity who knowingly violates this subsection (c) shall be subject to the following civil penalties:

(A) One thousand dollars (\$1,000) for the first violation;

(B) Two thousand five hundred dollars (\$2,500) for the second violation within five (5) years;

(C) Five thousand dollars (\$5,000) for a third or a subsequent violation within five (5) years. The district attorney general may bring an action to suspend the business licenses and permits of the person or business entity for one (1) year for any violation under this subsection (c). The department is authorized to bring an action to enforce any civil penalty under this subsection (c) in a complaint filed in the chancery court of the county where the merchant is located.

(d)(1) A recipient of public assistance benefits shall not knowingly use an electronic benefit transfer card in an automated teller machine or point-of-sale device located in:

(A) A liquor store as defined in 42 U.S.C. § 608(a)(12)(B)(i);

(B) A casino, gambling casino, or gaming establishment as defined in 42 U.S.C. § 608(a)(12)(B)(ii); or

(C) An adult cabaret as defined in § 7-51-1102.

(2) Any person who knowingly violates this subsection (d) shall reimburse the department for the amount withdrawn and used subject to any prohibition in federal law. Upon a third or subsequent violation, if permitted by federal law, the person shall be permanently disqualified from receiving public assistance benefits by means of direct cash payment or an electronic benefits transfer access card.

(e) The department of human services shall establish a system for reviewing electronic benefit transactions of recipients pursuant to this section on such basis as the commissioner may determine, but not less than on a quarterly basis.

(f) A person or entity subject to a penalty or sanction under this section shall have the right to a hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(g)(1) The commissioner of human services is authorized to promulgate rules and regulations, including emergency rules, to effectuate the purposes of this section. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(2) The department shall add by rule to the prohibited use of an electronic benefits transfer card other purchases to the fullest extent later permitted by federal law.

(h) Any revenues deposited or civil fines collected pursuant to subsection (c) shall be deposited into the general fund.

### **71-3-503. Program and facilities exempt from licensing.**

(a) A program or activity that falls within the definition of a child care agency shall be exempt from the licensing requirements of this part upon demonstration of clear and convincing evidence that it meets one (1) of the

following exemptions in subdivisions (a)(1)-(11), or, if no specific exemption exists in subdivisions (a)(1)-(11), there is clear and convincing evidence demonstrating that the program or activity meets the criteria of subsection (c):

(1) Entities or persons licensed or otherwise regulated by other agencies of the state or federal government providing health, psychiatric or psychological care or treatment or mental health care or counseling for children while the entity or person is engaged in such licensed or regulated activity;

(2) Preschool or school age child care programs, a Title I program, a school-administered head start or an even start program, and all state-approved Montessori school programs, that are subject to regulation by the department of education or other departments of state government;

(3) Private or parochial kindergartens for five-year-old children if such kindergartens operate on the public school kindergarten schedule;

(4) Child care centers operated by church-related schools, as defined by § 49-50-801, which shall be subject to regulation by the department of education pursuant to title 49, chapter 1, part 11;

(5) Educational programs. To qualify for an educational program exemption, a child care agency must meet the following criteria:

(A) That the sole or primary purpose of the program is:

(i) To prepare children for advancement to the next educational level through a prescribed course of study or curriculum that is not typically available in a department-regulated child care setting;

(ii) To provide specialized tutoring services to assist children with the passage of mandatory educational proficiency examinations; or

(iii) To provide education-only services to special needs children; and

(B) That the program time scheduled to be dedicated to the educational activity is reasonably age appropriate for the type of activity and the ages served;

(6)(A) "Parents' Day Out" or similar programs operated by a religious institution or religious organization that provide custodial care and services for children of less than school age, with no child attending more than two (2) days in each calendar week for not more than six (6) hours each day;

(B) Existing and all future programs shall register with the department their intent to operate a Parents' Day Out program prior to offering the service, and, as evidence of their exempt status, these programs shall maintain records that include, at a minimum, dates and times of each child's attendance;

(C) The records and forms shall be made available during regular business hours to the commissioner or commissioner's designee;

(D) Each separate location or campus of a religious institution or religious organization shall be considered a separate religious institution or religious organization for the purpose of Parents' Day Out or any similar program;

(7) Recreational programs. To qualify for a recreational program exemption, a child care agency must meet the following criteria:

(A) That the sole or primary purpose of the program or activity is to provide recreational services, e.g., organized sports or crafts activities;

(B) That the sole or primary purpose of the program or activity is dedicated to recreational activities for a substantial portion of the hours of operation;

(C) That the majority of program staff responsible for the direct delivery of services possesses specialized qualifications that are directly related to the recreational services being offered;

(D) That at least seventy-five percent (75%) of any individual child's program time is spent engaging in the recreational activities that are reasonably age appropriate for the type of activity and the ages served;

(E) That the supervision or care of children, or other types of child care-related services, is incidental to its overall purpose; and

(F) That no individual child could participate in the program or activity:

(i) For more than seven (7) hours per day; or

(ii) If a child participates for more than seven (7) hours per day, that such child could not continue to participate for more than seven (7) consecutive weeks and for no more than one hundred twenty (120) days per calendar year;

(8) Camp programs. To qualify for a camp program exemption, a child care agency must meet the following criteria:

(A) That the primary purpose of the program or activity is to provide intensive recreational, religious, outdoor or other activities that are not routinely available in full-time child care;

(B) That the program or activity operates exclusively during the summer months and less than ninety (90) days in any calendar year; and

(C) That the enrollment periods for participation in the program or activity clearly define the duration of the program or activity and exclude drop-in child care;

(9)(A) "Casual care" operations consisting of places or facilities operated by any person or entity that provides child care, at the same time, for a minimum of five (5) children, but less than fifteen (15) children, who are not related to the primary caregiver, during short periods of time that do not exceed ten (10) hours per week or six (6) hours per day for any individual child while the parents or other custodians of the children are engaged in short-term activities, not including employment of the parent or other custodian of the child;

(B) These operations shall register with the department their intent to conduct casual care of children, and, as evidence of their exempt status, these operations shall maintain records that include, at a minimum, the children's names, ages, addresses, dates and times of attendance, the parents' or custodians' names, addresses, and intended whereabouts while the children are in care, and the telephone numbers of persons to contact in the event of an emergency. All records shall be made available at any time to any authorized representative of the department;

(C) Failure to comply with the requirements of this subdivision shall subject the violator to a civil penalty by the department not to exceed five hundred dollars (\$500) for the first violation and not to exceed one thousand dollars (\$1,000) for subsequent violations, and the department may seek injunctive relief in the chancery or circuit court of the county where the place or facility is located to prevent further operation of the place or facility or to obtain entry to conduct any inspection of the operation;

(10)(A) Any program or facility operated by, or in affiliation with, any Boys and Girls Club that provides care for school-aged children and that holds membership in good standing with Boys and Girls Clubs of America

and that is certified as being in compliance with the purposes, procedures, voluntary standards and mandatory requirements of Boys and Girls Clubs of America;

(B) Any such Boys and Girls Club that applies to participate in state or federally funded programs that require child care licensing by the state as a term of eligibility may elect to apply to the department for child care licensing and regulation. Upon meeting departmental standards, the Boys and Girls Club may be licensed as a child care center/provider;

(C) The department is hereby authorized to grant a waiver from any rule concerning grouping of children and adult/child ratios for child care centers to any Boys and Girls Club that falls within both subdivisions (a)(11)(A) and (a)(10)(A) and (B), and that is providing after-school child care to mixed groups of school-aged children; and

(11) Nurseries, babysitting services and other children's activities that are not ordinarily operated on a daily basis, but are associated with religious services or related activities of churches or other houses of worship. Such services or activities may include limited special events that shall not exceed fourteen (14) days in any calendar year.

(b)(1) Exempt programs under subdivisions (a)(3), (6) and (9) shall post a sign stating, "This facility is not required to be licensed by the state as a child care agency."

(2) When a parent, custodian or guardian initially registers a child with an exempt program under subdivisions (a)(3), (6) and (9), which is required to post a sign pursuant to this subsection (b), the parent, custodian or guardian shall sign a form indicating that the parent, custodian or guardian has been advised and understands that the program is not licensed and is not required to be licensed by the state as a child care agency. The same language that is required to be placed on the sign shall be printed on such form at least in 16-point type with a signature line for the parent, custodian or guardian immediately following such language. The signed form shall be maintained with the records of the exempt entity.

(c) In analyzing whether the program or activity is exempt pursuant to this section, unless the department determines upon clear and convincing evidence that the program or activity qualifies for an exemption based upon the criteria set forth in subdivisions (a)(1)-(11), the department shall consider the following nonexclusive criteria to determine if the program or activity is clearly distinguishable from child care services typically regulated by the department and otherwise qualifies for exemption from licensing:

(1) The sole or primary purpose of the program or activity is to provide specialized opportunities for the child's educational, social, cultural, religious or athletic development, or to provide the child with mental or physical health services;

(2) The time period in which the program or activity provides these opportunities is consistent with a reasonable time period for the completion of the program or activity, considering the age of each child served and the nature of the program;

(3) The primary purpose of the program or activity is not routinely available or could not be made routinely available in the typical child care settings regulated by the department;

(4) Parents could reasonably be expected to choose the program or activity because of the unique nature of what it offers, rather than as a substitute for

full-time, before or after school, holiday or weather-related child care; and

(5) If the program or activity is regulated by any other federal, state or local agency, it is required by such other agency to comply with standards that substantially meet or exceed department licensing regulations.

(d)(1) The department shall not be required to grant exemptions to programs or activities that offer otherwise exempt opportunities or services as a mere component of a program or activity that the department determines primarily constitutes substitute child care.

(2) No program or activity shall be exempt from licensing solely for the reason that the care and supervision of children that constitutes child care is offered only on a part-time or periodic basis.

(3) Exemption from licensure does not exempt the program or activity from compliance with any other local, state or federal requirements.

(e) A child care agency claiming an exemption pursuant to this section may submit to the department's licensing director, or designee, a sworn, written request for exemption in such manner and form as the department may require. The request shall provide a detailed description of the operation of the program or activity, the program's or activity's purpose and the applicant's basis for claiming an exemption. The department shall provide a written response to the exemption request stating the reasons the exemption was granted or denied.

**71-3-507. Criminal history violation information required of persons having access to children — Review of records and registries — Verification — Exclusion from access to adults.**

(a)(1) The following shall complete a disclosure form in a manner approved by the department disclosing criminal records, juvenile records histories and the status of such person on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, the state's sex offender registry and status as an indicated perpetrator of abuse or neglect in the records of the department of children's services and the department of human services, or in any jurisdiction, and shall agree to release all such records to the childcare agency and to the department to verify the accuracy of the information contained on the disclosure form:

(A) A person applying to work with children as a paid employee, director or manager with a childcare agency as defined in § 71-3-501, with any detention center or temporary holding resource as described in § 37-5-109, or with the department in any position in which any significant contact with children is likely in the course of the person's employment; or who applies for any license, that is not the renewal of an existing license or otherwise seeks to be an operator, as defined by the rules of the department, of a childcare agency as defined in § 71-3-501 and who has significant contact with children in the course of such role and is not otherwise exempted from the application of this section by rules of the department;

(B) A person who is a new substitute staff person, paid or unpaid, and who is to be used by the childcare agency to meet childcare standards and who serves as a substitute for more than thirty-six (36) hours in any one (1) calendar year; or

(C) A person fifteen (15) years of age or older who resides in a childcare agency that is being licensed initially or who moves into a childcare agency

following initial licensure.

(2)(A) Persons subject to the requirements of subdivision (a)(1) shall also supply a fingerprint sample in a manner prescribed by the department and by the Tennessee bureau of investigation (TBI), and shall submit to a fingerprint-based background review of criminal history records, and juvenile records that are available to the TBI, to be conducted by the TBI, and shall submit to a review of the person's status on the department of health's vulnerable persons registry under title 68, chapter 11, part 10, the state sex offender registry, and pursuant to § 71-3-515, a review of the person's status in the department of children's services and the department of human services records of indicated perpetrators of abuse or neglect of children or adults, and, if determined necessary by the department, a review of any available juvenile records in juvenile court.

(B) All persons subject to the requirements of subdivision (a)(1), and all persons applying to work with the department in any position in which any significant contact with children is likely in the course of the person's employment with the department, shall have the fingerprint-based background review, including juvenile records available to the TBI, and the registry and perpetrator records and juvenile records reviews required by subdivision (a)(2)(A) completed as required by this section prior to assuming any role described in subdivision (a)(1) or prior to employment with the department; and if the person is fifteen (15) years of age or older and:

(i) The person is a resident of a childcare agency, the person must have the fingerprint-based background review, including juvenile records available to the TBI, and the registry and perpetrator records reviews, and if determined necessary by the department juvenile court records reviews, required by subdivision (a)(2)(A) completed prior to the granting of any license that is not the renewal of an existing license to the childcare agency in which the person resides at the time of initial application; or

(ii) If the person is to become a resident of the childcare agency, the person must have the reviews required by subdivision (a)(2)(B)(i) completed prior to the person's becoming a resident of the childcare agency.

(C) The person or entity with which a person subject to subdivision (a)(1) will be, or is, associated shall be responsible for obtaining and submitting as directed by the department the fingerprint sample and any information necessary to process the fingerprint-based background reviews and reviews required by this section prior to the person's assumption of any role described in subdivision (a)(1).

(3) The disclosure forms shall include at a minimum the following information:

(A) The social security number of the applicant, substitute or resident;

(B) The complete name of the applicant, substitute or resident;

(C) Disclosure of information relative to any violations of the law, including pending criminal or juvenile charges of any kind, and any conviction or juvenile adjudication involving a sentence or suspended or reduced sentence, and a release by the person of all records involving the person's criminal and juvenile background history and records relative to the person's status on the department of health's vulnerable persons registry maintained pursuant to title 68, chapter 11, part 10, on the state's

sex offender registry and the status of the person as an indicated perpetrator of abuse or neglect of a child or adult as determined by any agency of this state or any other jurisdiction; and

(D) A space for the person to state any circumstances that should be considered in determining whether to allow the person who has a criminal, juvenile, registry or abuse or neglect records history to be employed or to provide substitute services or to remain as a resident in the agency.

(4) The form shall notify the person that falsification of required information may subject the person to criminal prosecution, and that the person's employment, licensing or other status or circumstances in the childcare agency or the department is dependent upon the person's criminal and available juvenile records history status, the person's status on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, and on the state's sex offender registry, and, pursuant to § 71-3-515, the person's status as an indicated perpetrator of abuse or neglect of children or adults as contained in the records of the department of children's services and the department of human services.

(5) A copy of the disclosure form shall be maintained in the childcare agency's records for review by the department, and the department shall maintain a copy of the disclosure form in the records of the applicant for a license or as operator or for employment with the department.

(b)(1) The disclosure form, or information contained on the form, obtained pursuant to this section, together with the fingerprints of the person, shall be submitted by the childcare agency for its applicants, licensees, operators, substitutes or residents, and by the department for its applicants, to the appropriate department staff or state contractors providing fingerprinting services, in the format required by the department and the TBI. The department or contractor will transmit the necessary information to the TBI for completion of the fingerprint-based background review of criminal records and juvenile records that are available to the TBI.

(2) The TBI shall compare the information and the fingerprint sample received with the computer criminal history files maintained by the bureau and, to the extent permitted by federal law, with federal criminal databases and shall conduct the fingerprint and criminal history background check for the person pursuant to § 38-6-109. It shall report the existence of any criminal or juvenile history involving the person to the department, which shall inform the childcare agency and the person regarding the person's ability to assume a position for which a background review is required by this section.

(3) The results of the inquiry to the TBI shall be documented in the records of the childcare agency for the person for whom the background check is sought, and the department shall also maintain a record of the results of all persons for whom a criminal background history is received.

(4) The department shall notify in writing the appropriate district attorney general of any falsification of the information on the disclosure form.

(5)(A) The department shall pay to the TBI the cost of processing the criminal history background fingerprint check requested by the agency or by the department as set forth in § 38-6-109. Payment of the costs is to be made in accordance with §§ 38-6-103 and 38-6-109.

(B) The childcare agency shall be responsible for all costs associated with obtaining, handling and processing of the fingerprint sample that is

submitted to the TBI.

(C) The department shall only be responsible for payment for one (1) processing fee that is required by the TBI. If the fingerprint sample is rejected and if any further costs are required to process the fingerprint, the childcare agency is responsible for any further costs, regardless of the number of efforts required to obtain a valid fingerprint sample.

(c)(1) All persons subject to subsection (a), and employees of the department's licensing division, shall also be subject to a review by the department of their status on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, on the state's sex offender registry, and a review conducted pursuant to § 71-3-515, of their status in the department of children's services and the department of human services records of indicated perpetrators of abuse or neglect of children or adults and, if determined necessary by the department, a review of any available juvenile records in juvenile court.

(2) The department shall conduct the review for license applicants and operators.

(3) The results of the inquiry to the registries and the departments' records shall be maintained in the person's records at the agency and with the department.

(d) The childcare agency or the department shall not permit a person to assume any role described in subdivision (a)(1) prior to the completion of a review of the criminal history and juvenile records available to the TBI and the juvenile court, including the fingerprint-based background review, review of the department of health's vulnerable persons registry and the state's sex offender registry, and, pursuant to § 71-3-515, a review of the department of children's services and the department of human services records of indicated perpetrators of abuse or neglect of children or adults, and, if determined necessary by the department, juvenile court records reviews. The reviews must demonstrate that the person is not subject to a criminal history or a juvenile history or a history on the registries or in the records of the department of children's services or the department of human services that would, as described in this part, disqualify or otherwise exclude the person from any role described in subdivision (a)(1).

(e)(1)(A)(i) Whether obtained by use of the procedures established in this section or whether information is obtained by any other means, no person shall be employed with, be a licensee or operator of, provide substitute services to, or have any access whatsoever to children in a childcare agency as defined by this part, nor shall the person be employed with the department in a position having significant contact with children, whose criminal or available juvenile background records, registry or perpetrator records demonstrate that the person has been convicted of, pled guilty or no contest to an offense or lesser included offense, is the subject of a juvenile petition or finding that would constitute an offense or lesser included offense, or whose criminal or juvenile background history report or other information demonstrates the existence of a pending warrant, indictment, presentment or petition, involving:

- (a) The physical, sexual or emotional abuse or neglect of a child;
- (b) A crime of violence against a child or any person;
- (c) Any offense determined by the department, pursuant to properly promulgated rules, to present a threat to the health, safety or

welfare of children;

(d) The identification of the person on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, or on the state's sex offender registry, or, whose status, pursuant to a review under § 71-3-515, of the department of children's services and the department of human services records of indicated perpetrators of abuse or neglect of children or adults, or if determined necessary by the department, reviews of available juvenile court records, demonstrate a history that would require the person's exclusion under this part.

(ii) No person who is currently charged with or who has been convicted of or pled guilty to a violation of § 39-13-213, § 55-10-101, § 55-10-102 or § 55-10-401, or any felony involving use of a motor vehicle while under the influence of any intoxicant, may, for a period of five (5) years after the date of the conviction or felony plea, be employed as or serve as a driver transporting children for a childcare agency.

(B)(i) Upon receipt from the department of the criminal and juvenile fingerprint-based background report or other information regarding the criminal, juvenile, vulnerable persons, sex offender or perpetrator records histories of a person about whom this information was obtained, the department shall notify the childcare agency and the person of the person's clearance to assume a position with the childcare agency or that the person must be excluded from positions or circumstances with the agency described in subdivision (a)(1) or from any access to children.

(ii) The childcare agency, and the department for its employees, shall immediately exclude any person from employment, from substitute services or from any access whatsoever to children in the childcare agency or, if a resident of a childcare agency, the agency shall exclude the resident from access to children in the childcare agency, if the criminal, juvenile, registry, perpetrator records history or other information regarding the person place the person within the prohibited categories established in subdivision (e)(1)(A). The department shall deny the license or operator status of any such person. If an exemption from the exclusion is provided for by rule of the department pursuant to subsection (f), the person shall remain excluded or that person's license or operator status shall be denied until it is determined by the department that there is a basis for an exception from the exclusion.

(iii) The failure of a childcare agency to exclude a person with a prohibited criminal, juvenile, vulnerable persons or sex offender registry or perpetrator records history at a childcare agency from employment with the agency, or from the provision of substitute services to children in the agency, or the failure, as determined by the department, to adequately restrict the access of a resident or any other person in a childcare agency to children being cared for by the agency, shall subject the childcare agency to immediate suspension of the agency's license by the department.

(2) Any person who is excluded pursuant to this section or whose license or operator status is denied or revoked based upon the results of a disclosure form statement, fingerprint-based background, criminal or juvenile records history, registry or perpetrator history review pursuant to this part, or other records review, may appeal the exclusion to the department within ten (10)

days of the mailing date of the notice of such exclusion to the subject person.

(3) If timely appealed, the department shall provide an administrative hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, in which the appellant may challenge the accuracy of the determination.

(4) The appellant may not collaterally attack the factual basis of an underlying exclusionary record except to show that the appellant is not the person identified on the record. Further, except to show that the appellant is not the person identified on the record, the appellant may not collaterally attack or litigate the facts that are the basis of a reported pending criminal or juvenile charge except to show that the charge was, or since the report was generated, has been dismissed, nolleed, has resulted in an acquittal or has been expunged.

(f)(1) The department may by rule provide for a review process that utilizes an advisory group of law enforcement personnel, persons experienced in child protective services, persons experienced in child development issues and childcare providers, or other persons it determines are appropriate, to consider and, if appropriate, recommend to the department exemptions from the exclusions established by this section, or for any other exclusions of persons established pursuant to the department's rules, that are based on the person's criminal background or juvenile background history or from the records of the person maintained in the vulnerable persons or sex offender registries or contained in the indicated perpetrator records of the departments of children's services or human services.

(2) Any exemption granted must be based upon extenuating circumstances that would clearly warrant the exemption, and this determination shall be made in writing in the record of the department and of the childcare agency and shall be open to public inspection.

(3) If an exemption rule is promulgated by the department under this part or by any state agencies utilizing the methods authorized by subsection (g) or (h), the person who is not granted an exemption from the exclusion upon review of the person's criminal, juvenile, registry or other records history pursuant to this part may have this issue considered in an administrative appeal as provided by subsection (e).

(g)(1)(A) A child care agency as defined in § 37-5-501 or § 71-3-501, a child care program as defined in § 49-1-1102, the department of children's services, the department of education, the department of human services, the department of mental health and substance abuse services, the department of intellectual and developmental disabilities and any other state agency or any person or entity that contracts with the state may require the persons set forth in subdivisions (g)(1)(A)(i)-(iii) to undergo a background or records review of any kind, to complete a disclosure form stating the person's criminal and juvenile records history and agree to release all records involving the person relating to the criminal, juvenile and perpetrator records history of the person to the entities described in this subdivision (g)(1)(A), and, if further required by the requesting entity, to supply a fingerprint sample and submit to a fingerprint-based review of criminal and juvenile records available to the TBI to be conducted by the TBI. The person may also be required to submit to a review of the person's status on the department of health's vulnerable persons registry under title 68, chapter 11, part 10, and on the state's sex offender registry, and

pursuant to § 71-3-515, a review of the department of children's services and the department of human services records of indicated perpetrators of abuse or neglect of children or adults, and, if determined necessary by the agency, department or contractor, a review of any available juvenile records in juvenile court. The results of these inquiries shall be maintained in the person's records. Failure or refusal of a person to submit to or complete the disclosures, background and records reviews required by the entities in this subdivision (g)(1)(A) shall result in the immediate exclusion of the person from any position or status for which these reviews are required by this section:

(i) A person applying to work or substitute, or currently working, in any capacity as a paid employee, licensee or operator, substitute or volunteering, with children with the entities in subdivision (g)(1)(A) or who otherwise has access to children in those entities;

(ii) An applicant for a foster parent position or an applicant to be an adoptive parent, or a current foster parent or a current prospective adoptive parent with the department of children's services; or

(iii) A person fifteen (15) years of age or older who resides in a childcare agency licensed pursuant to this part or title 37, chapter 5, part 5, and who is not otherwise required by subdivision (a)(1), or who is not otherwise required by any other law.

(B) Nothing in this subsection (g) shall be construed to mean that any other law that mandates that fingerprint-based background, registry or any records review be conducted on applicants for employment, licensee, operator, substitute, volunteer or agency resident status is made voluntary, repealed or superseded in any manner by this subsection (g), and this section is supplementary to, and is not in lieu of, any mandatory provisions for such other statutorily required background, registry or records checks.

(2) The disclosure form shall contain the information described in subdivisions (a)(3) and (a)(4).

(3) A copy of the disclosure form shall be maintained in the requesting entity's records of the persons for whom the background check is sought.

(4)(A) The fingerprints of the person shall be submitted by the entity authorized by this subsection (g) to do so, to the TBI in the format required by the bureau.

(B) The TBI shall compare the information received and the fingerprints of the person with the computer criminal history files, and juvenile history files available to and maintained by the bureau and, to the extent permitted by federal law, with federal criminal databases to verify the accuracy of the criminal or juvenile violation information pursuant to § 38-6-109, and shall report the existence of any criminal or juvenile history involving the person to the requesting entity; and if the report was made to an entity that is licensed by any state agency, the bureau shall also send a copy of the report showing the criminal or juvenile history to the state agency.

(C)(i) For a person who was not subject to a fingerprint-based or other records screening prior to assuming a role described in subdivision (g)(1)(A), that person's existing status in the role shall be conditional upon the satisfactory outcome of any requested fingerprint-based background review, criminal, and available juvenile records review, and upon

vulnerable persons and sex offender registries and department of children's services and department of human services perpetrator records, reviews, and, if determined necessary by the entity, a review of any available juvenile records in juvenile court, that may be conducted pursuant to this section; provided, however, that if a person is initially applying to assume any type of role described in subdivision (g)(1)(A), and an entity described in subdivision (g)(1)(A) utilizes this subsection (g) as a pre-employment screening procedure, the person shall not assume the role until satisfactory completion of the reviews.

(ii) In either circumstance in subdivision (g)(4)(C)(i), the criminal and available juvenile history and fingerprint-based background review, the vulnerable persons and sex offender registry review and any review of the perpetrator records of the departments of children's services and human services must demonstrate that the person is not subject to a criminal or juvenile history or a history on these registries or in such records that would, as described in this part, disqualify or otherwise exclude that person from any role described in subdivision (g)(1)(A). If the fingerprint-based background or records review, or any other information from any other source confirms that subsection (e) is applicable, that person shall not be permitted to have further contact with children in such role, except as otherwise permitted by this section.

(iii) A person's employment or contract status shall not remain in a conditional status for a position with any state agency for which federal law or regulations do not permit the state agency to license or approve the position until all necessary licensing requirements are met, unless specifically authorized by state or federal law or regulation to the contrary.

(iv) The employment status of persons for whom a post-employment fingerprint-based background, registry or record review was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a childcare agency for whom these reviews were conducted after license approval, and who were not otherwise subject to pre-status applicant or access reviews and to the exclusionary provisions provided in this section, shall be governed by any regulations that may govern their status in a regulated entity or by applicable employment law.

(D) The results of the inquiry to the TBI or other registry or records review shall be documented in the records of the entity requesting the reviews. If the entity is regulated by, or is a contractor to, this state, the entity shall immediately report exclusionary results of the criminal and juvenile history background, registry or perpetrator records reviews to its regulatory or contracting state agency.

(E) If the information submitted on the disclosure form appears to have been falsified, the entity requesting the background check, or if the entity is regulated by or has a contract with this state, the regulatory or contracting agency shall notify the district attorney general of the falsification in writing.

(F) Any costs incurred by the TBI in conducting the investigations of the applicants shall be paid by the entity that requests the investigation and information. Payment of the costs is to be made in accordance with §§ 38-6-103 and 38-6-109.

(h)(1)(A) As a supplemental method of criminal and juvenile background history review for any applicants for employment, for license or operator

status, or for substitute or volunteer status with childcare agencies or childcare programs, or with the state agencies or their contractors, as listed in subdivision (g)(1) or with the entities that the state agencies may regulate, or for residents of new childcare agencies, or for current employees, licensees, operators, substitutes or volunteers of childcare agencies or for current residents of childcare agencies, those entities listed in subdivision (g)(1) that have an agreement for access to the TBI's criminal and available juvenile history database may require such persons to submit a disclosure form as set forth in subdivisions (a)(3) and (a)(4), a copy of which shall be maintained with the requesting entity's records, and agree to release all records involving the person relating to the criminal and available juvenile history of the person.

(B) Those entities with the agreement in subdivision (h)(1)(A) may then access directly the TBI's Tennessee crime information computer (TCIC) system and conduct a name search of Tennessee criminal and available juvenile history records by using only the information contained on the disclosure form completed pursuant to subdivision (h)(1)(A), or by using any other information available to the searching entity.

(2) If information obtained by this method indicates that there exists, or may exist, a criminal or juvenile record on the person, the entity conducting the search may further review the criminal and juvenile record history with the person and, as appropriate, with the entity with whom the person who is the subject of the review is associated, to obtain further verification. The requesting entity, at its own cost, may also request fingerprint samples as otherwise authorized by this section and submit the fingerprints for a complete Tennessee and federal criminal and available juvenile history background review pursuant to this section and § 38-6-109.

(3) The results of the search shall be maintained in the records of the person about whom the search was made and shall be subject to review by the regulating entities.

(4) Nothing in this subsection (h) shall be construed to mean that any other law that mandates that criminal and juvenile background reviews be conducted on applicants for employment, for license or operator status, for substitute or volunteer service positions or for resident status is made voluntary, repealed or superseded in any manner by this subsection (h), and this subsection (h) is supplementary to, and is not in lieu of, any mandatory provisions for such other statutorily required criminal and juvenile background reviews.

(i) Subsections (e) and (f), including, but not limited to, the exclusion of persons from providing care or being licensed for the care of children or having access to children upon determination of the criminal, available juvenile, registry or perpetrator records background of such persons, the suspension of operations of or the denial or regulation of any license, certification or approval of any entities that fail to exclude persons with an exclusionary history, and the exemptions from the exclusionary provisions shall be applicable to those persons having exclusionary backgrounds or histories determined by the processes established by subsections (g) and (h) or by any other means.

(j) Any person disqualified by a state agency from care for or access to children based upon the results of any fingerprint-based, criminal, juvenile, registry, perpetrator records or other records review conducted under subsections (g) and (h), or by any other means may, as provided in subdivisions (e)(2)-(4), appeal that determination to a state agency that has made the

request.

(k) Nothing in this section shall be construed to prevent the exclusion of any person from providing care for, from being licensed or certified or approved for the care of children pursuant to this part or from having access to a child in a child caring situation if a criminal or juvenile proceeding background history or other record that would require the person's exclusion under this part is discovered and verified in any other manner other than through a procedure established pursuant to this section. All procedures, rules and appeal processes established pursuant to this section for the protection of children and the due process rights of excluded persons shall also be applicable to those persons.

(l) It is unlawful for any person to falsify any information required on the disclosure form required by this section. A person who knowingly fails to disclose on the disclosure form required information or who knowingly discloses false information or who knowingly assists another to do so commits a Class A misdemeanor.

**71-3-515. Development of procedure for submitting names and other identifying information to determine if persons have perpetrated abuse or neglect of a child or adult — Due process rights.**

(a) The department of children's services and the department of human services shall develop a procedure whereby the names and other identifying information for all potential employees of the department of human services in that department's licensing division and adult protective services program and any persons who are subject to § 71-2-403 or § 71-3-507, and who, under those sections, may have contact with children in a childcare agency or with adults in an adult day care agency licensed by the department of human services, shall be submitted to the department of children's services and the department of human services adult protective services program to determine if the potential employees or other persons subject to those provisions were found by the department of children's services or the department of human services adult protective services program to have perpetrated abuse or neglect of a child or adult.

(b) No person shall be reported as an indicated perpetrator of abuse or neglect for purposes of this part or chapter 2, part 4 of this title, by either the department of children's services or the department of human services adult protective services program unless it is determined that the due process rights of the person were either offered, but not accepted, or were fully concluded pursuant to the rules of the department of children's services or the department of human services and applicable state and federal law.

**71-3-517. Development of a written multi-hazard plan to protect children in emergencies.**

(a) All persons or entities operating a child care agency as defined in this part, excluding drop-in child care centers and those programs and facilities exempt from licensing as provided in § 71-3-503, shall, in consultation with appropriate local authorities and local emergency management, develop a written multi-hazard plan to protect children in the event of emergencies, including, but not limited to, fires, tornados, earthquakes, chemical spills, and floods. Such persons or entities shall also inform parents and guardians of

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children attending the child care agency of the plan.

(b) The written plan required pursuant to this section shall include:

(1) Procedures for child care agency staff to notify parents in an emergency;

(2) The development of designated relocation sites and evacuation routes to those sites;

(3) Reunification plans for children and families; and

(4) Written individualized plans for accommodating a child's special needs in an emergency situation.

(c) The child care agency shall maintain documentation that the emergency plan is reviewed monthly.

(d) All child care agency staff persons shall be trained on the plan annually.

(e) The child care agency shall implement these emergency procedures through timely practice drills to meet local regulations and local emergency services plans and shall maintain documentation of drills for one (1) year. Such drills shall involve the following:

(1) At least one (1) fire drill shall be conducted monthly;

(2) Child care agencies shall alternate drills each month to cover each shift while children are present, including extended care hours;

(3) At least one (1) drill other than fire shall be conducted every six (6) months; and

(4) All drills shall be conducted in such a way as to simulate, as closely as is practical, conditions of a real emergency, with alarms to be utilized and evacuation plans to be practiced.

(f)(1) Emergency telephone numbers for the following entities shall be posted next to all child care agency telephones and shall be readily available to all child care agency staff members:

(A) Fire department;

(B) Police department and sheriff's office;

(C) Nearest hospital emergency room;

(D) Department of children's services child abuse hotline;

(E) Local emergency management agency;

(F) Ambulance or rescue squad;

(G) Poison control center; and

(H) Department of human services child care complaint hotline.

(2) If a generic emergency number, including, but not limited to, 911 service, is operable in the community, it shall also be posted in the manner prescribed in this subsection (f).

(g) All contact information for parents, guardians, and emergency personnel shall be readily available to all child care agency staff, including work, home and cell phone numbers.

**71-3-518. Priority on wait list of children with parent or guardian serving on active duty in armed forces.**

On or after July 1, 2013, unless otherwise prohibited by federal or state law, no child care agency licensed pursuant to this part shall place a child with at least one (1) parent or legal guardian that serves on active duty in the armed forces of the United States on a wait list behind a child with no parent or legal guardian serving on active duty in the armed forces of the United States.

**71-3-1111. Annual report. [Effective until June 30, 2015. See the Compiler's Notes.]**

This part shall be reviewed annually by the commerce and labor committee of the senate, the insurance and banking committee of the house of representatives, the finance, ways and means committee of the senate and the finance, ways and means committee of the house of representatives, and these committees shall recommend necessary changes to the governor and the general assembly.

**71-3-1202. Implementation of program of suspicion-based drug testing for applicants to TANF.**

(a) The department of human services shall develop a plan to implement a program of suspicion-based drug testing for each applicant who is otherwise eligible for temporary assistance for needy families (TANF), or its successor program.

(b)(1) Dependent children under eighteen (18) years of age are exempt from the drug testing requirement pursuant to this part; provided, however, that any minor parent who is an applicant for TANF benefits who does not live with a parent, legal guardian, or other adult caretaker relative must comply with the drug testing requirements of this part.

(2) In a two-parent household, only one (1) parent shall be required to undergo a drug test.

(c) The implementation shall occur in phases over a two-year period. The department shall report on the status of the implementation to the health and welfare committee of the senate and the health committee of the house of representatives. The status reports shall be sent to the chairs of each committee quarterly beginning October 1, 2012, during the implementation period.

(d)(1) The department shall consult with substance abuse treatment experts, as determined by the commissioner of human services, and shall develop appropriate screening techniques and processes that will establish reasonable cause that an applicant for TANF is using a drug as defined by this part and that can be used to establish the necessary criteria to permit the department to require the applicant to undergo a urine-based five (5) panel drug test to be conducted by a drug testing agency.

(2) The applicant may inform the drug testing agency administering the test of any prescription or over-the-counter medication the person is taking. No drug for which an applicant has a current valid prescription shall be a basis for denial of TANF benefits pursuant to this part.

(3) Following an initial positive drug test, the applicant shall undergo a confirmation test using the same urine sample from the initial positive test prior to determination of TANF eligibility. The results of the confirmation test shall be used to determine final eligibility for TANF benefits.

(e) The department shall identify and select a screening tool such as the substance abuse subtle screening inventory (SASSI) or such other screening techniques as part of the development of the screening technique that will be employed for this program.

(f)(1) The department shall develop a plan for funding of the costs of the screening process, the urine-based drug testing process, any personnel and information systems modification costs, and any other costs associated with

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the development and implementation of the testing process.

(2) The plan shall provide for funding from existing TANF or other funding available to the department, from appropriations requested by the department or from any combination of sources.

(g) The department shall develop a plan for any modification of its information systems necessary to properly track and report on the status of applicants who are screened and who must undergo testing as required by this part, including a detailed analysis of costs for systems analysis, programming and testing of modifications and implementation dates for completion of the modifications.

(h) The drug testing plan shall require, at a minimum, the following:

(1) That the department shall establish a referral process for any applicant who tests positive to be referred to an appropriate treatment resource for drug abuse treatment or other resource by the department for an appropriate treatment period as determined by the department. The plan shall require evidence of ongoing compliance during the treatment period. If the applicant is otherwise eligible during the treatment period, the applicant shall receive TANF benefits during the treatment period no longer than six (6) months;

(2) That refusal of an applicant who tests positive to enter a treatment plan or failure to complete the treatment plan shall result in ineligibility for TANF benefits for six (6) months;

(3) That at the conclusion of the treatment period the applicant shall be tested again using the urine-based five (5) panel drug test, and the plan shall require that upon retesting, if the applicant tests positive for the use of drugs that is validated by a confirmation test, the applicant shall be ineligible for TANF benefits for six (6) months;

(4) That if the person tests positive for drugs in a subsequent drug test after the six (6) months disqualification period that person shall be ineligible to receive TANF benefits for one (1) year from the date of the positive confirmation drug test;

(5) That if a caretaker relative is deemed ineligible for TANF benefits as a result of failing a drug test, the dependent child's eligibility for TANF benefits is not affected, and an appropriate protective payee shall be designated to receive TANF benefits on behalf of the child who is under sixteen (16) years of age.

#### **71-3-1203. Submission of final plan and proposed rules.**

The department shall submit to the health and welfare committee of the senate and the health committee of the house of representatives its final plan and proposed rules for administration of the drug testing program for TANF applicants by January 15, 2014, and shall implement the drug testing program beginning July 1, 2014, based on the plan submitted, unless otherwise directed by law.

#### **71-4-608. Cooperation and utilization of other agencies.**

Pursuant to the general policies of the department, the director and the division are authorized to:

(1) Cooperate with and utilize the services of the state agency or agencies administering the state's public assistance program, the federal bureau of

old-age and survivors insurance under the United States department of health and human services, and other federal, state and local public agencies providing services relating to vocational rehabilitation, and with the state system of public employment offices in the state, and shall make maximum feasible utilization of the job placement and employment counseling services and other services and facilities of such offices;

(2) Cooperate with political subdivisions, other public and nonprofit organizations and agencies, in their establishment of workshops and rehabilitation facilities, and, to the extent feasible in providing vocational rehabilitation services, shall utilize all such facilities meeting the standards established by the department;

(3) Enter into contractual arrangements with the federal bureau of old-age and survivors insurance under the United States department of health and human services, with respect to certifications of disability and performance of other services, and with other authorized public agencies for performance of services related to vocational rehabilitation, for such agencies;

(4) Contract with schools, hospitals, and other agencies, and with doctors, nurses, technicians and other persons, for training, physical restoration, transportation, and other vocational rehabilitation services; and

(5)(A) Contract with a nonprofit organization or organizations for the management and operation of workshops for the blind located at Nashville and Memphis and, in fulfillment of the terms of such contract or contracts, lease the present workshop facilities to the organization or organizations for the period of time as specified in the contract; provided, that any contract entered into for this purpose shall not be effective until approved by the governor, attorney general and reporter, and comptroller of the treasury. Such contract shall also be governed by former § 12-4-109 [See the Compiler's Notes] and the regulations promulgated pursuant to former § 12-4-109. A contractor that manages and operates a workshop under this subdivision (5) shall not be bound by enactments of the general assembly that govern:

(i) The administration of personnel, including title 8, chapter 30;

(ii) The purchase of goods and services, including title 12, chapter 3 [see the Compiler's Notes] and former §§ 12-4-109 and 12-4-110 [see the Compiler's Notes]; and

(iii) The administration, disposition, and inventory of property and surplus property, including title 12, chapter 2 and § 4-3-1105.

(B) However, a contractor may purchase, inventory, and dispose of goods, property, and surplus property under these laws, with the approval of and under conditions set by the procurement commission. The department of general services may, upon request, purchase supplies and equipment for a contractor to manage and operate a facility. The purchases shall be made on the same terms and rules that govern the purchase of supplies and equipment by such department. The contractor shall pay for all such purchases. Any contractor operating a workshop under this subdivision (5) shall pay the minimum wage, unless a certificate of exemption is granted under the federal Fair Labor Standards Act of 1938, compiled in 29 U.S.C. § 201 et seq., as amended, and shall also comply with all other state and federal laws applying to employment in the private sector.

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**71-4-2101. Part definitions.**

(1) A “deaf-blind person” means the same as an “individual who is deaf-blind” and both mean any individual:

(A)(i) Who has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual field subtends an angular distance no greater than twenty degrees (20°), or a progressive visual loss having a prognosis leading to one (1) or both these conditions;

(ii) Who has a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition; and

(iii) For whom the combination of impairments described in subdivisions (1)(A)(i) and (ii) cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation;

(B) Who despite the inability to be measured accurately for hearing and vision loss due to cognitive or behavioral constraints, or both, can be determined through functional and performance assessment to have severe hearing and visual disabilities that cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining vocational objectives; or

(C) Meets such other requirements as the secretary may prescribe by regulation;

(2) A “deaf person” is defined as one whose hearing is totally impaired or one whose hearing, with or without amplification, is so seriously impaired that the primary means of receiving spoken language is through visual input such as, but not limited to, speechreading, sign language, finger spelling, or writing; and

(3) “Secretary” means the United States secretary of education.

**71-4-2102. Creation of the Tennessee council for the deaf, deaf-blind and hard of hearing.**

Effective July 1, 2013, there is hereby created the Tennessee council for the deaf, deaf-blind, and hard of hearing, which has the duty to:

(1) Advocate services affecting people who are deaf, deaf-blind, and hard of hearing in the areas of public services, health care, education, vocational training, employment opportunity, emergency services, resource sharing and communication;

(2) Act as a bureau of information for people who are deaf, deaf-blind, and hard of hearing to state agencies and public institutions providing health care, employment, vocational, educational services, resource sharing, and emergency services to the deaf, deaf-blind, and hard of hearing, and to local agencies and programs;

(3) Collect facts and statistics and other special studies of conditions affecting the health and welfare of people who are deaf, deaf-blind, and hard of hearing in this state;

(4) Provide for a mutual exchange of ideas and information on the national, state, and local levels;

(5) Encourage and assist local governments and agencies in the development of programs for people who are deaf, deaf-blind, and hard of hearing;

(6) Cooperate with public and private agencies and units of local, state, and federal governments in promoting coordination in programs for the deaf, deaf-blind, and hard of hearing;

(7) Authorize the executive director to prepare an annual report and needs assessment to the council that reviews the status of state services for the deaf, deaf-blind, and hard of hearing. The council shall submit the approved report and needs assessment to the governor, lieutenant governor, and speaker of the house of representatives and make this report available to organizations serving the deaf, deaf-blind, and hard of hearing; and

(8) Make recommendations for needed improvements and to serve as an advisory body in regard to new legislation affecting the deaf, deaf-blind, and hard of hearing.

**71-4-2103. Members — Terms — Meetings — Reimbursement for expenses.**

(a) The council for the deaf, deaf-blind, and hard of hearing shall consist of eighteen (18) members and shall be composed as follows: the commissioners of education, human services, health, mental health and substance abuse, and safety or their designees, the assistant commissioner of rehabilitation services or the assistant commissioner's designee, a representative of the Tennessee Regulatory Authority, a representative of the Tennessee Emergency Management Agency, the president of the Tennessee Association of the Deaf, two (2) deaf consumer representatives appointed by the governor, one (1) president of a Hearing Loss Association of America chapter, two (2) hard of hearing consumer representatives appointed by the governor, the president of the Tennessee Registry of Interpreters for the Deaf, the president of the Tennessee Hands & Voices, one (1) deaf-blind representative who may be appointed by the governor from lists of qualified persons submitted by interested deaf-blind groups including, but not limited to, the Tennessee Organization of the Deaf-Blind and the Tennessee Deaf-Blind Association, and one (1) minority representative who may be appointed by the governor from lists of qualified persons submitted by interested minority deaf advocate groups including, but not limited to, chapters of the Tennessee Black Deaf Advocates. In appointing the deaf-blind representative and the minority representative to the council as provided in this subsection (a), the governor shall consult with interested deaf-blind and minority deaf advocate groups to determine qualified persons to fill the positions.

(b) The deaf, deaf-blind and hard of hearing representatives shall serve terms of three (3) years, except that to ensure staggered terms, the governor shall designate that two (2) of the six (6) members initially appointed to serve a one-year term, two (2) to serve two-year terms, and two (2) to serve three-year terms. Any position that becomes vacant prior to the expiration of a full term shall be filled only for the period of the unexpired term. In making appointments to the council for the deaf, deaf-blind, and hard of hearing, the governor shall strive to ensure that at least one (1) person appointed to serve on the council is sixty (60) years of age or older.

(c) The commissioner of education shall call the first meeting of the council, at which time, and annually thereafter, the members shall elect a chair. Thereafter, the council shall meet at the call of the chair, but at least quarterly.

(d) Members of the council shall receive no compensation for their services

other than reimbursement for traveling and other expenses incurred in the performance of their official duties. All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

**71-4-2104. Executive director — Duties — Qualifications.**

(a) The council for the deaf, deaf-blind, and hard of hearing shall recommend to the governor an executive director and shall fix the executive director's duties and responsibilities. The executive director shall serve as executive officer and secretary to the council and shall be a full-time employee of the council. Compensation for the executive director shall be established by the council with the approval of the commissioner of human resources. All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(b) The executive director, with the advice and consent of the council, may, to the extent of available funds, plan and oversee the establishment of service centers for the deaf, deaf-blind, and hard of hearing, as well as, or in addition to, support and coordinate the activities of the existing centers in cooperation with the local board of directors.

(c) The executive director, with the advice and consent of the council, shall:

(1) Promote accessibility of all governmental services to deaf, deaf-blind, and hard of hearing citizens in Tennessee;

(2) Identify agencies, both public and private that provide community services, evaluate the extent to which they make services available to deaf, deaf-blind, and hard of hearing people, and cooperate with the agencies in coordinating and extending these services;

(3) Encourage the mutual exchange of ideas and information on services for deaf, deaf-blind, and hard of hearing people between federal, state and local governmental agencies, and private organizations and individuals;

(4) Survey the needs of people who are deaf, deaf-blind, and hard of hearing in Tennessee, and assist the council in the preparation of its report to the governor, lieutenant governor, and speaker of the house of representatives;

(5) Develop a strategy to create minimum standards for all sign language interpreters in Tennessee and make recommendations on how to implement these strategies to appropriate state departments, the governor, lieutenant governor, speaker of the house of representatives and general assembly;

(6) Promote the training of interpreters for the deaf, deaf-blind, and hard of hearing; and

(7) Perform such other duties as may be required by law.

(d) In selecting an executive director, the council shall select an individual who is fluent in the American sign language of the deaf and otherwise qualified.

(e) The executive director is authorized to arrange for such clerical or other assistance as may be required and as approved by the council.

**71-4-2105. Data supplied by state agencies and political subdivisions.**

The council for the deaf, deaf-blind, and hard of hearing may request and shall receive from any department, division, board, bureau, commission, or

agency of the state or of any political subdivision of the state such data as might be needed to enable it to properly carry out its activities under this part.

**71-4-2106. Plans for implementing community services for the hearing impaired.**

The council shall ensure that long range planning is conducted, which shall include a description of the locations and geographic service areas for community service centers, as well as a determination of personnel needs and strategies for coordinating service providers at state and local levels.

**71-4-2107. Purposes of community service centers.**

The purposes of community service centers for the deaf, deaf-blind and hard of hearing shall be to:

- (1) Inform deaf, deaf-blind, and hard of hearing persons and their families of their rights to services offered locally and to coordinate their referral to the appropriate organization;
- (2) Coordinate communication between deaf, deaf-blind, and hard of hearing persons and the desired agency or organization, and promote the accessibility of community services to deaf, deaf-blind, and hard of hearing persons;
- (3) Coordinate the provision of instruction in sign language to persons in community agencies;
- (4) Inform interested staff of community and professional organizations about the nature of deafness, deaf-blindness and hearing loss and the capabilities of people experiencing it;
- (5) Provide services as outlined by this part to employers of deaf, deaf-blind, and hard of hearing persons and related members of the family that may be involved;
- (6) Provide the specified services to the deaf, deaf-blind, and hard of hearing persons qualified under this part without cost;
- (7) Serve as an advocate for the rights and needs of people who are deaf, deaf-blind, and hard of hearing; and
- (8) Help deaf, deaf-blind, and hard of hearing citizens to become self-sufficient in meeting their needs in the community.

**71-4-2108. Source of funds.**

The council for the deaf, deaf-blind, and hard of hearing is authorized to pursue and receive moneys from any source, including appropriate federal funds, gifts, grants, and bequests, which shall be expended for the purposes designated in this part.

**71-4-2109. Authorization for other agencies to supply services.**

The governor is authorized to designate existing departments of state government, or divisions of state government, to provide statewide services to the deaf, deaf-blind, and hard of hearing as specified in this part.

**71-5-105. Powers and duties of department — Total number of ICF/MR beds — Certificate of need exemption for DIDD public ICF/MR non-facility beds established pursuant to federal litigation.**

(a) The department shall:

(1) Supervise the administration of medical assistance for eligible recipients;

(2) Make uniform rules and regulations, not inconsistent with the law, for implementing, administering and enforcing this part in an efficient, economical and impartial manner;

(3)(A) Establish, in consultation with the comptroller of the treasury, rules and regulations for the determination of payment for hospitals, and other health care providers who contract with the department for the care of persons eligible for assistance pursuant to this part;

(B) Establish, in consultation with the comptroller of the treasury and the Tennessee Health Care Association, rules and regulations for the determination of the per diem cost for those institutions or distinct parts of institutions defined as an “intermediate care facility” by the rules and regulations of the department and as designated and certified by the department. The method of cost determination shall include depreciation on buildings, equipment, and fixtures, and interest expense as allowable items of cost. The per diem cost may take into consideration the kinds, levels, and quantities of services provided to the recipients by the institution; the cost of providing such services; and the levels and types of patient care required for recipients. The commissioner may establish the maximum amount to be paid to such institutions, consistent with the requirements of federal law;

(C) Establish, in consultation with the comptroller of the treasury and the Tennessee Health Care Association, rules and regulations for the determination of the per diem cost for those institutions or distinct parts of institutions defined as a “skilled nursing facility” by the rules and regulations of the department, and as designated and certified by the department. The per diem cost may conform to the principles of reimbursement for provider cost under Title XVIII of the Social Security Act as amended, Public Law 89-97, compiled in 42 U.S.C. § 1395 et seq., and applicable regulations. The commissioner may establish the maximum amount to be paid to such institutions, consistent with the requirements of federal law;

(D) Upon passage of any law authorizing the promulgation of rules establishing an acuity-based reimbursement methodology for nursing facility care, the per diem cost reimbursement methodology set forth in subdivisions (a)(3)(B) and (C) shall be phased out in accordance with such regulations establishing an acuity-based reimbursement methodology, and shall be inapplicable upon the full implementation of the acuity-based reimbursement methodology;

(4) Cooperate with the appropriate federal department in any reasonable manner as may be necessary to qualify for federal aid in connection with the medical assistance program;

(5) Within sixty (60) days after the close of each fiscal year, prepare and print an annual report, which shall be submitted to the governor and

members of the general assembly. This report shall include a full account of the operations and the expenditures of all funds under this part, adequate and complete statistics divided by counties about all medical assistance within the state, rules and regulations of the department promulgated to carry out this part, and such other information as it may deem advisable;

(6) Prepare or have prepared and release a summary statement monthly showing by counties the amount paid under this part and the total number of persons assisted;

(7) Establish and enforce safeguards to prevent unauthorized disclosures or improper use of the information contained in applications, reports of investigations and medical examinations, and correspondence in the individual case records of recipients of medical assistance;

(8) Furnish information to acquaint needy persons and the public generally with the plan for medical assistance of this state;

(9) Cooperate with agencies in other states in establishing reciprocal agreements to provide for payment of medical assistance to recipients who have moved to another state, consistent with this part and of Title XIX, compiled in 42 U.S.C. § 1396 et seq., as amended;

(10) Contract, to the extent feasible, with one (1) or more contractors or fiscal intermediaries, or both, to provide or arrange services under this part. All such contracts shall be procured in accordance with the requirements of title 12, chapter 4, part 1; provided, that the department shall be required to solicit competitive proposals for contracts with fiscal intermediaries;

(11) Increase the coverage under medicaid for inpatient hospital days from fourteen (14) days to twenty (20) days, as provided for in the public health regulations of the United States department of health and human services, health care financing administration (HCFA). Coverage for inpatient hospital days shall be unlimited for any infant under the age of one (1) year to the extent required by federal law or regulations. The commissioner is further directed to promulgate a rule establishing a system of prospective reimbursement, targeted reimbursement, diagnosis-related groups, other method of reimbursement related to diagnosis, or other method of reimbursement pursuant to any federal waiver that waives any or all of the provisions of Title XIX, compiled in 42 U.S.C. § 1396 et seq., that the state may receive or pursuant to any other federal law as adopted by amendment to the required Title XIX state plan, at which time such mechanism shall be used to determine the number of inpatient hospital days instead of the twenty-day limitation provided in this subdivision (a)(11); and

(12) Notwithstanding any law to the contrary, assist the council on children's mental health care in developing a plan that will establish demonstration sites in certain geographic areas where children's mental health care is child-centered, family-driven, and culturally and linguistically competent and that provides a coordinated system of care for children's mental health needs in this state.

(b)(1) The total number of beds in private for-profit and private not-for-profit intermediate care facilities for persons with mental retardation (ICF/MR) facilities shall not exceed a total maximum number of six hundred sixty-eight (668). In compliance with the certificate of need process, private for-profit and private not-for-profit ICF/MR beds may be transferred from one location to another but the total number of such beds shall not exceed six hundred sixty-eight (668).

(2) Beginning July 1, 2006, the total number of beds in ICF/MR facilities shall increase by forty (40) beds per year for the next four (4) years, resulting in a maximum of eight hundred twenty-eight (828) beds by July 1, 2009. Only providers that have been providing services to persons with developmental disabilities under contract with the state for at least five (5) years shall be eligible to apply for these new beds. These new beds shall be initially filled by persons exiting the developmental centers and upon the death of the person who exited the developmental center, the bed may be filled by individuals from the home and community based services (HCBS) waiver waiting list for individuals with intellectual disabilities, subject to the individual's freedom of choice and pursuant to a process established and administered by the department of intellectual and developmental disabilities (DIDD) in order to ensure that such placement is the most integrated and cost-effective setting appropriate. Providers may refuse persons based on needs compatibility with the total mix of persons in the facility. The department of intellectual and developmental disabilities (DIDD) shall do everything possible to provide referrals for these new beds. DIDD must demonstrate a commitment in assisting providers in locating referrals by obtaining a written statement from the conservator of every eligible service recipient indicating that they have been fully informed of the community ICF/MR facilities and the specialized services they provide.

(3) DIDD is to appoint a nine-person taskforce to review oversight, utilization, and future need for ICF/MR services and make recommendations to the general assembly and governor by June 30, 2007. Three (3) of the members of the taskforce shall be appointed by the DIDD from a list of persons provided by Tennessee Community Organizations (TNCO), and three (3) of the members shall be appointed by DIDD from a list of persons provided by ARC of Tennessee. The remaining three (3) members shall be employees of DIDD or other state agencies. DIDD shall designate one (1) of the members as chair of the taskforce.

(c) Notwithstanding any authority to the contrary, DIDD public ICF/MR non-facility beds established pursuant to federal litigation settlements or orders arising out of the cases *United States v. State of Tennessee*, 798 F. Supp. 483; 1992 U.S. Dist. LEXIS 14004 (W.D. Tenn. 1992), or *People First of Tennessee, et al., v. Clover Bottom Developmental Center, et al.*, NO. 00-5342 (Docket) (C.A.6 Mar. 22, 2000), shall be exempt from all requirements and processes for the application and granting of certificates of need as set forth in § 68-11-1607. The establishment of all private ICF/MR non-facility beds remains subject to certificate of need requirements and processes.

#### **71-5-106. Determination of eligibility for medical assistance.**

(a)(1) The departments of health and human services, as may be designated by the governor, shall make the determination of eligibility under this part, subject to approval of the finance, ways and means committees of the senate and the house of representatives and the health and welfare committee of the senate and the health committee of the house of representatives. Such determination of eligibility may be accomplished through contractual agreement with agencies of the federal government. Eligibility for assistance shall be determined in a manner that will ensure that medical assistance is provided, within the limits of available resources subject to federal financial

participation, to all persons who, although ineligible for supplementary security income (SSI), complied under Title XVI of the Social Security Act, 42 U.S.C. § 1381 et seq., or are medically needy.

(2)(A) A notice that awards medicaid benefits shall include the following statement:

“A person with both medicare and medicaid does not usually need other health insurance. Did you buy a medicare supplement policy after November 4, 1991? If so, you can have the insurance company put your policy and your payments on hold. The insurance company can do this for up to twenty-four (24) months while you are on medicaid. If you lose medicaid during the twenty-four-month period, you can get your policy back.

“To put your policy on hold, contact your insurance company within ninety (90) days of when you get medicaid. To get your policy back, you must tell your insurance company within ninety (90) days after you lose medicaid.”

(B) A notice that terminates medicaid benefits shall include the following statement:

“Did you have medicare supplement insurance that you put on hold while you had medicaid? You may be able to get your policy back if you have put it on hold less than two (2) years ago. Contact your insurance company within ninety (90) days after you lose medicaid. Tell the insurance company that you want your policy reinstated.”

(b) In determining the eligibility of an individual for benefits under this chapter, resources that have been previously owned and transferred by the individual, or such individual's spouse, shall be treated in a manner consistent with Title XIX of the Social Security Act, compiled in 42 U.S.C. § 1396 et seq.

(c) Any transaction described in subsection (b) shall be presumed to have been for the purpose of establishing eligibility for benefits or assistance under this part, unless such individual or eligible spouse furnishes convincing evidence to establish that the transaction was exclusively for some other purpose.

(d) For purposes of subsection (b), the value of such a resource or interest shall be the fair market value of such resource or interest at the time it was sold or given away, less the amount of compensation received for such resource or interest, if any.

(e) In the event that any resource, or interest in any resource, is given away or sold for less than fair market value by a person holding a power of attorney by the owner of the resource or interest, such resource or interest shall not be counted as a resource to the owner of the property pursuant to subsections (b)-(d) under the following circumstances:

(1) The power of attorney was not executed for the purpose of establishing or continuing medicaid eligibility;

(2) The owner of the property has, at the time of the transfer, neither actual nor constructive knowledge of the transfer or is unable because of mental or physical incapacity to take reasonable and necessary steps to prevent such sale or transfer.

(f) If any resource or interest in any resource is given away or sold for less than fair market value by a person holding a power of attorney by the owner of such resource, the sale or gift shall be set aside by a court of competent jurisdiction as being in defraud of the state upon motion of the state of

Tennessee or of any party representing the owner of the resource, unless the person holding the power of attorney proves by a preponderance of the evidence that the sale or gift was exclusively for some other purpose than the establishment or continuance of medicaid eligibility.

(g) In addition to the requirements of subsection (f), the person exercising the power of attorney and the person to whom the resource is given or sold for less than fair market value shall be jointly and severally liable to the state of Tennessee for any costs incurred by it in providing medicaid benefits to the owner of the resource, until such time as the conveyance is set aside, for any costs, including attorney fees, court costs, and any other related expenses, incurred by it in having the conveyance set aside, and for any losses incurred as a result of any damage, destruction, expenditure, waste, transfer of the resources or other act of the persons involved that diminishes the value of the resource. Such liability shall be limited to the actual value of the resource.

(h) In the event that a person otherwise eligible for medicaid has filed an action in court to set aside a transfer for less than value because of fraud, duress, trick or otherwise, such person shall be or shall remain eligible, or both, and the state of Tennessee shall have recourse under subsections (f) and (g) to set aside the transfer and recover.

(i) In addition to the other categories of eligibility under this section, there shall be a category of medical assistance eligibility for those children who:

(1)(A) Were born after September 30, 1967;

(B) Are eighteen (18) years of age or younger; and

(C) Are in intact families that meet the TANF income and resource requirements; or

(2) As provided in Title IV of the Social Security Act, compiled in 42 U.S.C. § 601 et seq., have been determined to be a child with special needs, for whom there is in effect an adoption assistance agreement between the department of children's services and an adoptive parent or parents, and who the department of children's services has determined cannot be placed with an adoptive parent or parents without medical assistance because such child has special needs for medical, mental health, or rehabilitative care.

(j) Subsections (b)-(j) shall not limit the ability of the state to extend medical assistance to persons who are medically needy pursuant to any federal waiver received by the state that waives any or all of the provisions of Title XIX, compiled in 42 U.S.C. § 1396 et seq., or pursuant to any other federal law as adopted by amendment to the required Title XIX state plan.

(k) Effective January 1, 1998, if the actual enrollment of non-previously enrolled children under eighteen (18) years of age that began on April 1, 1997, has not reached seventy-five percent (75%) of anticipated enrollment level of fifty thousand (50,000) children, the commissioner of health shall offer enrollment in the Title XIX waiver program, TennCare, to children under eighteen (18) years of age whose family income is below two hundred percent (200%) of the federal poverty level schedule in effect for calculation of TennCare premiums. Such offer of enrollment in the TennCare program shall be made in accordance with TennCare promulgated rules and regulations. It is the legislative intent that this section be implemented only to the extent that it is determined to be consistent with the terms, conditions and eligibility criteria of the TennCare waiver as approved by the United States department of health and human services and that state and federal funding is available for such purpose.

(l) Beginning January 1, 2003, the bureau of TennCare or its designee shall

determine eligibility for TennCare on an annual basis as follows:

(1) All non-medicaid eligible TennCare enrollees will have the responsibility to complete an eligibility process each year; in the absence of re-application and completion of the process, coverage will expire;

(2) Upon notification by the bureau of TennCare, the enrollee must submit application for continuation of eligibility within ninety (90) days; once an application has been timely submitted, the enrollee must provide all required documentation to verify continued eligibility in accordance with TennCare rules and regulations;

(3) Notification to the enrollee is presumed when a notice is mailed to the last known address;

(4) Lack of receipt of the notification does not excuse the responsibility of the enrollee to submit an application and provide documentation for continuation of eligibility as required by TennCare rules and regulations if the enrollee has changed addresses and failed to notify the bureau of TennCare or its designee; and

(5) Failure of the enrollee to contact the bureau of TennCare or its designee concerning a change in address relieves the bureau of responsibility for contacting the enrollee.

(m) To the extent permitted by federal law, the state may impose a reasonable fee for costs of eligibility determinations for applicants applying for medical assistance as part of the medically eligible expansion population under the TennCare waiver.

(n) In the TennCare waiver expansion population, except for persons medically eligible as uninsurable persons, enrollment shall not be permitted for individuals from households with incomes of greater than two hundred fifty percent (250%) of federal poverty levels.

(o) Except as may be required by federal law or the TennCare waiver, no person shall be eligible to receive TennCare benefits, except employee health insurance subsidy payments, as part of the TennCare waiver expansion population if such person is enrolled in a health insurance plan as such coverage is defined in TennCare rules and regulations, or if such person is eligible for participation in medicare or group health insurance offered through an employer or family member's employer, or COBRA coverage.

(p) All determinations of eligibility for persons medically eligible as uninsurable in the TennCare waiver's expansion population shall be made on the basis of health conditions that prevent the person from obtaining health insurance. Such a determination will be based upon a review of medical records and information in accordance with TennCare rules and regulations.

(q) To the extent permitted by the terms of relevant court orders and decrees, any applicable federal waiver under Title XIX of the federal Social Security Act, compiled in 42 U.S.C. § 1396 et seq., or any other federal law, the bureau of TennCare may not remove persons from eligibility for or participation in medical assistance provided pursuant to this chapter for reasons relating to restricting eligibility or enrollment for fiscal or other reasons that are not required by federal law until the bureau has complied with both of the following:

(1) The bureau has verified at the time of application the validity of the social security number of every person enrolled in the medical assistance program provided pursuant to this chapter with appropriate federal databases in order to determine whether persons who are not lawful residents of the United States are present in the program, or are otherwise fraudulent

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applicants; and

(2) Removed from the program all such ineligible persons who are current recipients in the program but are not lawful residents of the United States, or are otherwise fraudulent applicants.

**71-5-107. Kinds of medical services.**

(a) Medical assistance, including demonstration projects and programs designed to enhance the efficient and economic operation of the medicaid program, shall be provided to those classes of individuals determined to be eligible under § 71-5-106. This medical assistance, in the amount, scope, and duration determined by the commissioner of health and to the extent permitted by federal law, may include:

(1) Inpatient hospital services, other than services in an institution for tuberculosis or mental diseases;

(2) Outpatient hospital services;

(3) Other laboratory and X-ray services;

(4) Skilled nursing home services, other than services in an institution for tuberculosis or mental diseases;

(5) Physicians' services, whether furnished in the office, the patient's home, a hospital, a skilled nursing home, or elsewhere;

(6) Drugs;

(7) Inpatient hospital services for individuals sixty-five (65) years of age or over in an institution for tuberculosis or mental diseases, and inpatient hospital services for individuals under twenty-one (21) years of age in institutions for mental diseases, or in case of an individual who was receiving such inpatient services for mental disease in the period immediately preceding the date on which such individual becomes twenty-one (21) years of age:

(A) The date on which such individual no longer requires the services;  
or

(B) If earlier, the date such individual becomes twenty-two (22) years of age;

(8) Nonmedical nursing care shall be rendered in accordance with the tenets and practice of a recognized church or religious denomination to any indigent person otherwise qualified for assistance under this part who depends upon healing by prayer or spiritual means alone in accordance with the tenets and practice of such church or religious denomination;

(9) Skilled nursing home services for individuals sixty-five (65) years of age or over in institutions for tuberculosis or mental diseases;

(10) Medical screening, diagnostic and treatment services for eligible categorically connected individuals under twenty-one (21) years of age;

(11) Psychiatric clinic services in approved facilities;

(12)(A) Home health care services provided in the recipient's home. The services may follow the recipient into the community subject to subdivision (a)(12)(B);

(B) Home health nurses or aides may accompany a recipient outside the home during the course of delivery of prior approved home health nurse or home health aide services if all of the following criteria are met:

(i) The home health nurse or home health aide shall not transport the recipient;

(ii) The home health agency shall have discretion as to whether or not to accompany a recipient outside the home. The circumstance under which a home health agency may exercise such discretion shall include, without limitation, when the home health agency has concern regarding any of the following:

- (a) The scheduling or safety of the transportation;
- (b) The health or safety of their employee or the recipient;
- (c) The ability to safely and effectively deliver services in the alternative setting; and
- (d) The additional expense that would be required to accompany a patient outside the home;

(iii) Additional visits or hours of care will not be approved for coverage for the purpose of accompanying a recipient outside the home. Services will be limited to services to which the recipient would be entitled if the services were provided exclusively at the recipient's place of residence; and

(iv) No additional reimbursement shall be paid to the home health agency in association with the decision of a home health agency to accompany a patient outside the home;

(C) Nothing in this subdivision (a)(12) is intended to create an entitlement to services outside the home;

(D) A home health agency shall not be subject to any claims or cause of action as result of exercising its discretion under this subdivision (a)(12);

(13) Transportation for approved emergency medical examination or treatment, or both;

(14) Intellectual disability and rehabilitation services;

(15) Intermediate care facilities services;

(16) Medical services rendered by community or neighborhood health organizations or clinics, including organizations or clinics where some or all of the medical services are provided by medical students presently enrolled in a medical school accredited by the Association of American Medical Colleges or licensed registered nurses, or both, and where such students or licensed registered nurses are under the direction of a licensed physician or physicians;

(17) Family planning services and supplies;

(18) Basic dental care services;

(19) Medical and surgical services rendered by ambulatory surgical treatment centers;

(20) Services rendered by rural health clinics;

(21) Medical assistance and home-based and community-based services to those eligible being served through a health care financing administration (HCFA) approved waiver designed to provide more efficient and economical alternatives to institutional care;

(22) Services by nurse anesthetists who are registered by the Tennessee board of nursing, who have completed an advance course in anesthesia, and who hold a current certification from the American Association of Nurse Anesthetists as a nurse anesthetist;

(23) Nurse midwife services performed by a person who is licensed by the Tennessee board of nursing as a registered nurse under the authority of the Nursing Practice Act, compiled in title 63, chapter 7, and certified by the American College of Nurse Midwives as a certified nurse midwife; and

(24) Services provided by certified pediatric nurse practitioners and certified family nurse practitioners as required by federal law.

(b) With respect to recipients determined to be “medically needy,” all or a part of the medical services outlined in subsection (a) may be provided, and may, within applicable federal legislation and regulations, be of lesser amounts, duration and scope than medical services provided other medicaid recipients in order to ensure that an expenditure of state funds shall not exceed the amount provided for the operation of the medicaid program.

(c) When the amount, duration, and scope of medical services is lessened so as to no longer include intermediate care facility services, the commissioner of health, with approval of the commissioner of human services, may continue to provide intermediate care facility services to those recipients who have been determined to be medically indigent and placed in a medicaid certified intermediate care facility bed at the time such change in the amount, duration, and scope of medical services is made.

(d) The department shall assist in the development of a demonstration project, which would provide cost effective alternatives to long-term care under the Omnibus Budget Reconciliation Act of 1981, to the extent permissible under the federal law, for institutional and residential homes that provide domiciliary care for the aged and mentally disabled, which project would include the Foster-Group Care Home Association. The development of such demonstration project shall begin on July 1, 1982.

(e) The bureau of TennCare shall have the authority to implement a comprehensive disease management program for certain enrollees of the TennCare program to the extent permitted under federal law and the TennCare waiver. The bureau, through its authority to promulgate rules and regulations, may identify enrollees eligible to participate and the disease categories to be included in the comprehensive disease management program. The bureau, also through its authority to promulgate rules and regulations, may put in place requirements regarding the continued participation of enrollees in the program.

(f) Subject to the availability of funding earmarked for such programs in the general appropriations act and to the extent permitted under federal law and the TennCare waiver, the bureau of TennCare shall have the authority to create in whole or in part and administer a program to be named “The TennCare safety net” which will provide two different components to assist eligible TennCare enrollees:

(1) Certain medical providers in Tennessee shall provide non-emergency health care services without co-payment requirements to certain specified TennCare enrollees. Such services are intended to include only services that are both medically necessary and within the scope of TennCare benefits for the particular enrollee but for which the enrollee cannot meet the co-payment requirements. Through its authority to promulgate rules and regulations, the bureau of TennCare will identify the parameters of this component of the TennCare safety net program, including which enrollees are eligible to participate in this program, allowable benefits under the program, designation of both urban and rural providers who participate in this program, and a funding methodology pursuant to which such providers shall be compensated;

(2)(A) A TennCare foundation will be established that will accept and review applications for medical assistance submitted on behalf of certain

specified TennCare enrollees. The members of the foundation shall be appointed by the governor, who shall determine the size and composition of the foundation's membership. The governor should strive to ensure that the membership is representative of the state's geographic and demographic composition with appropriate attention to the representation of women and minorities. Terms for the members will be staggered and the length of terms will be detailed by the governor in making initial or subsequent appointments. The governor shall appoint the chair and vice-chair. For the purposes of administration and availability of records, the TennCare foundation shall be located within the bureau of TennCare; staff assistance shall be provided by the bureau of TennCare or by another entity, should the governor so determine. At the discretion of the governor, the foundation may be placed within another appropriate agency, may create or be reconstituted as a nonprofit entity, or may be terminated at any time; and

(B) Applications for medical assistance from the foundation are not intended, and should not be used, as a means to circumvent or avoid the benefit limits established by the bureau of TennCare. It is expected that these applications will be submitted to address special, unforeseen, or exceptional circumstances. Such applications must be submitted by a licensed medical provider who is treating the enrollee and shall request the provision of medically necessary health care services recommended or prescribed by the enrollee's treating provider that are beyond the scope of benefits provided through the TennCare program benefit package for which the enrollee is eligible. For the purposes of this subsection (f), "beyond the scope of benefits" means a benefit that is covered within limits by TennCare but for which the enrollee has exceeded the covered limits of that benefit. It does not include benefits that are not covered to any extent under TennCare for the applicant. The foundation will not consider matters of eligibility for the TennCare program. Through its authority to promulgate rules and regulations, the bureau of TennCare will identify the parameters of this component of the TennCare safety net program, including the process for making application to this foundation, which enrollees are eligible to apply, and a mechanism for determining which applications will be reviewed by the foundation. The foundation will not have rule-making authority;

(C)(i) Notwithstanding the availability of assistance from the foundation, no enrollee has an expectation of or an entitlement to assistance from the foundation;

(ii) There exists no right of appeal regarding an application for assistance; and

(iii) Because the level of funding provided to the foundation is limited, the foundation may not be able to fully or partially fund all applications. The decisions of which applications to fund will be solely within the discretion of the foundation;

(D) Nothing in this subsection (f) shall be construed to require a contested case hearing as set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, nor shall any determinations made by the foundation be considered final orders from which appeals can be taken. The consideration of applications provided for by this subdivision (f)(2)(D) shall not constitute hearings as set forth in the Uniform

Administrative Procedures Act;

(E) The foundation shall consider applications and determine in its sole discretion and without requirement for written findings whether the application should be granted in whole or in part. The foundation's determination on an enrollee's application shall have no binding precedential effect on the consideration of any other enrollees' applications;

(F) In the event that a matter being considered by the foundation presents a real or apparent conflict of interest for any staff or member, such staff or member shall disclose the conflict to the chair and be recused from any official action taken on the matter;

(G) Notwithstanding the open meetings law, compiled in title 8, chapter 44 or any other law to the contrary, any and all meetings of the TennCare foundation are to be considered confidential and closed to the public. Members and staff shall maintain strict standards of confidentiality in the handling of all matters before the foundation. In addition, all relevant federal and state laws regarding patient privacy and confidentiality will be adhered to. All material and information, regardless of form, medium, or method of communication, provided to or acquired by a foundation member or staff in the course of the foundation's work, shall be regarded as confidential information, shall not be disclosed, and are not public records. In addition, all material and information, regardless of form, medium, or method of communication, made or generated by a member or foundation staff in the course of the foundation's work, shall be regarded as confidential information and shall not be disclosed and are deemed not to be a public record. All necessary steps shall be taken by members and staff to safeguard the confidentiality of such material or information in conformance with federal and state law;

(H) Every October 1, the foundation shall report in writing to the governor, the health and welfare committee and commerce and labor committee of the senate and the health committee and insurance and banking committee of the house of representatives regarding how funds allocated to the foundation were spent during the previous fiscal year. Such report shall contain the following information:

- (i) How many applications were received;
- (ii) How many applications the foundation granted;
- (iii) The type of services and items that were funded; and
- (iv) Statistical information, by gender, race, and division of the state, on who applied for and who received the funds;

(I) Whether members shall receive reasonable compensation for their service on the TennCare foundation will be determined at the discretion of the governor; members may be reimbursed for those expenses allowed by the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter;

(J) If any federal or state court or other tribunal with jurisdiction:

- (i) Determines that any aspect of subdivision (f)(2)(A), (f)(2)(B), (f)(2)(C), (f)(2)(D), (f)(2)(E), or (f)(2)(G) violates federal law, state law, or any existing court order or consent decree, and

- (ii) Makes effective an order enjoining compliance with any aspect of these provisions or requiring non-trivial changes in the terms or applications of these provisions,

the challenged provisions may not be severed from the remainder of this

subdivision (f)(2). In this event, all provisions of this subdivision (f)(2) will terminate and have no further effect. Such termination shall occur no later than ninety (90) days after the effective date of the order unless such order is stayed by the issuing court or the reviewing court pending disposition of an appeal of the order. The decision whether or not to appeal any such order will be at the sole discretion of the bureau of TennCare. This nonseverability provision shall be self-executing. If this subdivision (f)(2) is terminated while appropriated funds remain, the unused funds shall revert back to the general fund. Any payments for services or items which have been approved but not yet disbursed as of the date of termination shall be paid, but no further applications for payments shall be considered or granted after the date of termination. In the event of termination under this subsection (f), the foundation may be reinstated only by new legislative action and a new appropriation by the general assembly.

(g) The bureau of TennCare shall have the authority, in collaboration with one or more medical schools located in Tennessee, to establish an evidence-based medicine initiative for the purpose of developing medical protocols and integrating standards of best practices within the delivery of TennCare services. To the extent that evidence-based medical protocols are authorized by the bureau of TennCare, such protocols shall satisfy the standard of medical necessity as set forth in § 71-5-144. The bureau of TennCare, through its authority to promulgate rules and regulations, shall establish the parameters for the initiative, including who can participate and how the initiative is to be implemented.

**71-5-118. Sanctions against vendors — Fraudulently obtaining benefits or payment for medical assistance — Penalties — Investigations — Recovery of benefits — Medicaid fraud control unit — Collection activity report — Applicant warning.**

(a) The commissioner of finance and administration has the authority to enter into contracts with qualified vendors to provide to eligible recipients medical assistance allowed under § 71-5-107. The commissioner has the authority to terminate or suspend existing contracts with providers, to refuse to enter into contracts with providers, and to recover any payments incorrectly paid if the commissioner finds that such actions will further the purpose of this section. Any action against such provider shall be treated as a contested case in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. If a hearing is requested by the provider, it shall be held prior to the imposition of any of the sanctions of this subsection (a), except that upon a finding by the commissioner that the public health, safety, or welfare imperatively requires emergency action, these sanctions may be imposed pending an opportunity for the provider to request a prompt hearing. Furthermore, the commissioner has the right to set off any money incorrectly paid against any claim for money submitted by the provider pending an opportunity for a hearing. Grounds for action against providers under this subsection (a) include, but are not limited to, the following:

- (1) Violation of the terms of the contract;
- (2) Violation of any provision of this part or the rules promulgated pursuant to this part;

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- (3) Billing for medical assistance that was not delivered;
- (4) Provision of medical assistance that is not medically necessary or justified;
- (5) Provision of medical assistance of a quality that is below professionally recognized standards;
- (6) Revocation or suspension of a provider's professional license or other disciplinary action by the agency regulating the profession of the provider; and
- (7) Failure to produce records, upon request, by authorized representatives of the commissioner as necessary to substantiate the medical assistance for which claims have been submitted.

(b) Without regard to any other civil or criminal liability that might attach, by operation of this section or any other law, to an enrollee or applicant's action in obtaining medical assistance or any assistance under this part, to which such person is not entitled, the bureau of TennCare shall have an administrative remedy for the recovery of the amount of any medical assistance benefits or payments improperly paid as a result of any misrepresentation made by such person, to the extent that such amount has not otherwise been recovered by the bureau. The bureau shall also have a right to recover in such administrative proceedings its reasonable costs and attorneys' fees, as well as interest on the amount owed by the person, calculated from the date that medical assistance was improperly paid. Any action against such person shall be treated as a contested case in accordance with the Uniform Administrative Procedures Act. In an administrative action under this subsection (b), the bureau shall show that the amount sought to be recovered was paid in the form of medical assistance as a result of material misrepresentation by the person against whom recovery is sought, but the bureau need not show that such misrepresentation was intentional or fraudulent.

(c) The bureau of TennCare shall report annually in writing to the criminal justice committee of the house of representatives and the judiciary committee of the senate regarding its collection activities of the estate recovery provisions of this chapter.

(d) All applicants for medical assistance under this part, and all applicants for reverification of eligibility to receive such assistance, shall receive a warning, in easily readable language, regarding the state recovery provisions, as well as the administrative, civil and criminal liability provisions of this chapter.

**71-5-137. Disclosures required of persons associated with managed care organizations.**

(a) The following persons associated with a managed care organization that participates in the TennCare program shall make disclosures required in § 8-50-502:

- (1) Officers and directors of the managed care organization;
- (2) Any person who is the legal or beneficial owner of five percent (5%) or more of the stock or other ownership interest in the managed care organization; and
- (3) Any person who controls, is controlled by or is under common control with, the managed care organization and who has entered into a management agreement, service contract, cost-sharing agreement or reinsurance contract with a managed care organization. For purposes of this subdivision

(a)(3), “control” has the same meaning as set forth in § 56-11-101(b).

(b) An official in the legislative branch, or an official in the executive branch and their immediate families, as such terms are defined in § 3-6-301, shall disclose any ownership interest or other connection as an officer, employee or director that such person may have in any managed care organization that participates in the TennCare program.

(c) The compensation from the managed care organization of all persons required to make disclosure under subsection (a) shall be disclosed in addition to the disclosure required under subsection (a).

(d) Disclosures required by this section shall be made to the bureau of TennCare and shall be made by March 1 of each year for the previous calendar year.

#### **71-5-182. Violations — Damages — Definitions.**

(a) Subject to subdivision (a)(2), any person who:

(1)(A) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval under the medicaid program;

(B) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim under the medicaid program;

(C) Conspires to commit a violation of subdivision (a)(1)(A), (a)(1)(B), or (a)(1)(D); or

(D) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money, or property to the state, or knowingly conceals, or knowingly and improperly, avoids, or decreases an obligation to pay or transmit money or property to the state, relative to the medicaid program;

is liable to the state for a civil penalty of not less than five thousand dollars (\$5,000) and not more than twenty-five thousand dollars (\$25,000), adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, compiled in 28 U.S.C. § 2461 note; Public Law 101-410, plus three (3) times the amount of damages which the state sustains because of the act of that person.

(2) However, if the court finds that:

(A) The person committing the violation of this subsection (a) furnished officials of the state responsible for investigating false claims violations with all information known to such person about the violation within thirty (30) days after the date on which the defendant first obtained the information;

(B) The person fully cooperated with any state investigation of such violation; and

(C) At the time such person furnished the state with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under §§ 71-5-181 — 71-5-186 with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation;

the court may assess not less than two (2) times the amount of damages which the state sustains because of the act of the person.

(3) A person violating this subsection (a) shall also be liable for the costs of a civil action brought to recover any such penalty or damages.

(b) For purposes of this section, “knowing” and “knowingly” mean that a

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person, with respect to information:

- (1) Has actual knowledge of the information;
- (2) Acts in deliberate ignorance of the truth or falsity of the information;

or

- (3) Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

(c) "Claim" means any request or demand, whether under a contract or otherwise, for money or property and whether or not the state has title to the money or property, that is presented to any employee, officer, or agent of the state, or is made to any contractor, grantee, or other recipient, if the money or property is to be spent or used on the state's behalf or to advance a state program or interest, and if the state provides or has provided any portion of the money or property requested or demanded; or if the state will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and does not include requests or demands for money or property that the state has paid to an individual as compensation for state employment or as an income subsidy with no restrictions on that individual's use of the money or property.

(d) "Obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.

(e) "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(f) Any person who engages, has engaged or proposes to engage in any act described by subsection (a) may be enjoined in any court of competent jurisdiction in an action brought by the attorney general and reporter. The action shall be brought in the name of the state and shall be granted if it is clearly shown that the state's rights are being violated by such person or entity and the state will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of such person or entity will tend to render such final judgment ineffectual. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent any act described by subsection (a) by any person or entity, or as may be necessary to restore to the medicaid program any money or property, real or personal, which may have been acquired by means of such act.

### **71-5-183. Civil actions — Employee remedies.**

(a) If the attorney general and reporter finds that a person has violated or is violating § 71-5-182, the attorney general and reporter may bring a civil action under this section against the person.

(b)(1) A person may bring a civil action for a violation of § 71-5-182 for the person and for the state. The action shall be brought in the name of the state of Tennessee. The action may be dismissed only if the court and the attorney general and reporter or district attorney general give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the state. The complaint shall be filed in camera, shall remain under seal for

at least sixty (60) days, and shall not be served on the defendant until the court so orders. The state may elect to intervene and proceed with the action within sixty (60) days after it receives both the complaint and the material evidence and information.

(3) The state may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subdivision (b)(2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until twenty (20) days after the complaint is unsealed and served upon the defendant.

(4) Before the expiration of the sixty-day period or any extensions obtained under subdivision (b)(3), the state shall:

(A) Proceed with the action, in which case the action shall be conducted by the state; or

(B) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection (b), no person other than the state may intervene or bring a related action based on the facts underlying the pending action.

(c)(1) If the state proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in subdivision (c)(2).

(2)(A) The state may dismiss the action notwithstanding the objections of the person initiating the action, if the person has been notified by the state of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The state may settle the action with the defendant notwithstanding the objections of the person initiating the action, if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the state that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:

- (i) Limiting the number of witnesses the person may call;
- (ii) Limiting the length of the testimony of such witnesses;
- (iii) Limiting the person's cross-examination of witnesses; or
- (iv) Otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the state elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the state so

requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts, at the state's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the state to intervene at a later date upon a showing of good cause.

(4) Whether or not the state proceeds with the action, upon a showing by the state that certain actions of discovery by the person initiating the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty (60) days. Such a showing shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the state may elect to pursue its claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil monetary penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceedings as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of this subdivision (c)(5), a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of jurisdiction, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d)(1)(A) If the state proceeds with an action brought by a person under subsection (a), a person shall, subject to subdivision (d)(1)(B), receive at least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action.

(B) Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, report, audit, investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(C) Any payment to a person under subdivisions (d)(1)(A) and (d)(1)(B) shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the state does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and

shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the state proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of § 71-5-182 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action that the person would otherwise receive under subdivision (d)(1) or (d)(2), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from such person's role in the violation of § 71-5-181, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the state to continue the action.

(4) If the state does not proceed with the action and the person bringing the action conducts the action, the court shall award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e)(1) In no event may a person bring an action under subsection (b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil monetary penalty proceeding in which the state is already a party.

(2)(A) The court shall dismiss an action or claim under this section, unless opposed by the state, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in a criminal, civil, or administrative hearing in which the state or its agent is a party; in a state legislative, state comptroller, or other state report, hearing, audit, or investigation; or from the news media, unless the action is brought by the attorney general and reporter or district attorney general or the person bringing the action is an original source of the information.

(B) For purpose of this subdivision (e)(2), "original source" means an individual who either prior to a public disclosure under subdivision (e)(2)(A) has voluntarily disclosed to the state the information on which allegations or transactions in a claim are based; or who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the state before filing an action under this section.

(f) The state is not liable for expenses that a person incurs in bringing an action under this section.

(g) Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action under this section or other efforts to stop one (1) or more violations of §§ 71-5-181 — 71-5-185. The relief shall include reinstatement with the same seniority status the employee, contractor,

or agent would have had but for the discrimination, two (2) times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An action under this subsection (g) may be brought in the appropriate court for the relief provided in this subsection (g), but may not be brought more than three (3) years after the date when the retaliation occurred.

(h)(1) Upon written request of the attorney general and reporter, the bureau of TennCare may bring an action as an administrative proceeding on behalf of the state for recovery under § 71-5-182 against any person specified by the attorney general and reporter other than an enrollee, recipient or applicant, subject to the conditions set forth in this subsection (h).

(2) The amount of actual damages that the state may seek in such administrative proceeding shall not exceed twenty-five thousand dollars (\$25,000). This limit shall not apply to any civil penalties or costs that the state is eligible to recover under § 71-5-182 or to § 71-5-182 related to double or treble damages.

(3) Notwithstanding § 71-5-182, the civil penalty for each violation of § 71-5-182 in such administrative proceeding shall be not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000).

(4) Any administrative action brought pursuant to this subsection (h) shall be subject to § 71-5-184.

(5) Any administrative action brought pursuant to this subsection (h) shall be initiated as a contested case in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(6) The bureau of TennCare shall have authority to promulgate rules and regulations pursuant to the Uniform Administrative Procedures Act, as are necessary to implement this subsection (h). For purposes of rendering a final order pursuant to the Uniform Administrative Procedures Act, the bureau of TennCare is designated as the agency to review initial orders and issue final agency decisions. Orders issued by the bureau of TennCare shall have the effect of a final order pursuant to the Uniform Administrative Procedures Act.

(7)(A) Whenever an order issued by the bureau of TennCare pursuant to this part has become final, a notarized copy of the order may be filed in the office of the clerk of the chancery court of Davidson County.

(B) When filed in accordance with this subsection (h), a final order shall be considered as a judgment by consent of the parties on the same terms and conditions as those recited in the order. The judgment shall be promptly entered by the court. Except as otherwise provided in this subsection (h), the procedure for entry of judgment and the effect of the judgment shall be the same as provided in title 26, chapter 6.

(C) A judgment entered pursuant to this subsection (h) shall become final on the date of entry.

(D) A final judgment under this subsection (h) has the same effect, is subject to the same procedures and may be enforced or satisfied in the same manner as any other judgment of a court of record of this state.

(8) Any recovery under this subsection (h) in excess of the amounts paid to reimburse the bureau of TennCare for damages and costs and to other interested parties shall be paid to the attorney general and reporter to be used to investigate and prosecute health care fraud in the TennCare

program.

(9) This subsection (h) is declared to be remedial in nature and shall be liberally construed to effectuate its purposes.

**71-5-190. TennCare prescription drug utilization review committee.**

(a) In order to provide oversight of prescription drug utilization under the TennCare program, there is hereby created a TennCare prescription drug utilization review committee. The committee shall consist of: one (1) member of the house of representatives appointed by the speaker of the house; one (1) member of the senate appointed by the speaker of the senate; and two (2) pharmacists, two (2) physicians, two (2) representatives of managed care organizations, two (2) representatives of pharmaceutical companies and two (2) consumers, all of whom shall be appointed by the comptroller of the treasury. The TennCare bureau shall provide to the committee such information as the committee deems appropriate concerning the prescriptions made to TennCare enrollees who receive more than seven (7) prescriptions. The committee shall review such information and make recommendations to the health and welfare committee of the senate, the health committee of the house of representatives and the TennCare bureau concerning potential drug interactions, abuse of prescription drugs or other appropriate matters.

(b)(1) Non-legislative members of the committee shall serve without compensation, but they shall be entitled to reimbursement for all necessary expenses incurred in the performance of their duties, in accordance with the comprehensive state travel regulations promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

(2) Legislative members of the committee shall not receive from the state an expense allowance or mileage allowance paid solely in consideration for serving on or attending meetings of the committee; provided, that this subdivision (b)(2) shall at no time preclude a legislative member from receiving an expense allowance or mileage allowance otherwise payable to such member in connection with attending the general assembly.

**71-5-314. Fraudulent receipt of food assistance — Penalties — Statute of limitations.**

(a) A person commits an offense who, knowingly, obtains, or attempts to obtain, or aids, or abets any person to obtain, by means of a willfully false statement, representation, or impersonation, or by any other fraudulent means or in any manner not authorized by this part, or by the regulations or procedures issued or implemented by the department pursuant to this part, any food coupons, food stamps, or food assistance benefits provided by any electronic benefits transfer process, or any assistance provided pursuant to this part by any other means as determined by the department, to which such person is not entitled or of a greater value than that to which such person is entitled.

(b) A person commits an offense who, knowingly, in any manner not authorized by this part or the regulations or procedures implemented by the department pursuant to this part, presents for payment, or causes to be presented for payment, transfers, exchanges, sells, or otherwise uses, or aids or abets any person to present for payment, transfer, exchange, sell, or otherwise

use any food coupons, food stamps or food assistance benefits, or any electronic benefits card, authorization or personal identification number, device or other thing or means issued or utilized for the purpose of providing temporary assistance benefits pursuant to this part electronically or otherwise.

(c) A person who receives food coupons, food stamps or food assistance benefits or any electronic benefits card, authorization or personal identification number, device or other thing or means issued or utilized for the purpose of providing food assistance benefits electronically or otherwise, knowing them to have been presented for payment, transferred, exchanged, sold or otherwise used in any manner not authorized by this part or the regulations or procedures implemented by the department pursuant to this part, commits an offense.

(d) An offense under this section is a Class E felony if the value of such food stamps, food coupons, or food assistance sought to be obtained, or that is obtained, is one hundred dollars (\$100) or more, and upon conviction of the offense, such person shall be sentenced for such offense as provided by law, or shall be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or both; and, if the food stamps, food coupons, or food assistance sought to be obtained, or that is obtained, is of a value less than one hundred dollars (\$100), such person commits a Class A misdemeanor and shall be sentenced or fined, or both, as provided by law.

(e) In addition to or in lieu of any of the penalties in this section, the court may order that such person be disqualified from participation in the food coupon, food stamp or food assistance program for twelve (12) months for the first offense, twenty-four (24) months for the second offense, and permanently for the third offense. Disqualification pursuant to this section of any adult from eligibility for assistance under this part shall not operate to disqualify or suspend the eligibility of an innocent adult or child of the disqualified person's family.

(f) The department shall enclose a copy of the penalties provided in this section one (1) time, in notice form, to each recipient of assistance pursuant to this part and post a notice to such effect in noticeable places in each of its assistance offices.

(g) In addition to any of the penalties in this section, any person convicted of any offense specified in subsection (a), (b) or (c) shall be ordered to make restitution in the total amount found to be the value of the food coupons, food stamps or food assistance that form the basis for the conviction. In the event any person ordered to make restitution pursuant to this section is found to be indigent and, therefore, unable to make restitution in full at the time of conviction, the court shall order a periodic payment plan consistent with the person's financial ability.

(h) Notwithstanding any other law to the contrary, prosecutions for any of the offenses specified in subsection (a), (b) or (c) shall be commenced within four (4) years after the commission of the offense. For purposes of this subsection (h), any such offense that is based upon a willful failure to report information as required by law is considered a continuing offense until such information is reported.

(i)(1) In addition to any criminal provisions provided by this section, the department is authorized to address intentional program violations or overpayments in the food assistance program through any administrative means, including, but not limited to, settlement of such violations or

overpayments by a written agreement with recipients or by the provision of administrative hearings pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, and federal regulations.

(2) The department is authorized to initiate legal action to collect all overpayments and all payments made due to intentional program violations or fraud in the food assistance program.

**71-5-701. Short title. [Effective until June 30, 2014.]**

This part shall be known and may be cited as the “Annual Coverage Assessment Act of 2013.”

**71-5-702. Part definitions. [Effective until June 30, 2014.]**

As used in this part, unless the context otherwise requires:

(1) “Annual coverage assessment” means the annual assessment imposed on covered hospitals as set forth in this part;

(2) “Annual coverage assessment base” is a covered hospital’s net patient revenue as shown in its medicare cost report for its fiscal year that ended during calendar year 2008 on file with the centers for medicare and medicaid services (CMS) as of September 30, 2009, subject to the following qualifications:

(A) If a covered hospital does not have a full twelve-month medicare cost report for 2008 on file with CMS as of September 30, 2009, but does have a full twelve-month medicare cost report for 2008 on file as of September 30, 2010, the twelve-month medicare cost report for 2008 on file with CMS as of September 30, 2010, will be the annual coverage assessment base;

(B) If a covered hospital does not have a full twelve-month medicare cost report on file with CMS for 2008, but does have a medicare cost report on file with CMS for 2009, that medicare cost report will be the annual coverage assessment base. If the covered hospital’s 2009 medicare cost report is for a partial year only, the net patient revenue in such medicare cost report shall be annualized to determine the hospital’s annual coverage assessment base;

(C) If a covered hospital was first licensed in 2010 or later and did not replace an existing hospital, the annual coverage assessment base is the covered hospital’s projected net patient revenue for its first full year of operation as shown in its certificate of need application filed with the health services and development agency;

(D) If a covered hospital was first licensed in 2010 or later and replaced an existing hospital, the annual coverage assessment base shall be the predecessor hospital’s net patient revenue as shown in its medicare cost report for its fiscal year that ended during calendar year 2008 on file with CMS as of September 30, 2009, subject to the qualifications of subdivisions (2)(A) and (B);

(E) If a covered hospital is not required to file an annual medicare cost report with CMS, then its annual coverage assessment base shall be its net patient revenue for the fiscal year ending during calendar year 2008 or the first fiscal year that the hospital was in operation if after 2008 as shown in the covered hospital’s joint annual report filed with the department of health;

(F) If a covered hospital's fiscal year 2008 medicare cost report is not contained in the CMS healthcare cost report information system file dated September 30, 2009, and does not meet any of the other qualifications listed in subdivisions (2)(A)-(E), then the hospital shall submit a copy of the hospital's 2008 medicare cost report to the bureau of TennCare in order to allow for the determination of the hospital's net patient revenue for the state fiscal year 2013-2014 annual coverage assessment;

(3) "Bureau" means the bureau of TennCare;

(4) "CMS" means the federal centers for medicare and medicaid services;

(5) "Controlling person" means a person who, by ownership, contract or otherwise, has the authority to control the business operations of a covered hospital. Indirect or direct ownership of ten percent (10%) or more of a covered hospital shall constitute control;

(6) "Covered hospital" means a hospital licensed under title 33 or title 68, as of July 1, 2013, except an excluded hospital;

(7) "Excluded hospital" means:

(A) A hospital that has been designated by CMS as a critical access hospital;

(B) A mental health hospital owned by the state of Tennessee;

(C) A hospital providing primarily rehabilitative or long-term acute care services;

(D) A children's research hospital that does not charge patients for services beyond that reimbursed by third party payors; and

(E) A hospital that is determined by the bureau of TennCare as eligible to certify public expenditures for the purpose of securing federal medical assistance percentage payments;

(8) "Medicare cost report" means CMS-2552-96, the cost report for electronic filing of hospitals, for the period applicable as set forth in this section; and

(9) "Net patient revenue" means the amount calculated in accordance with generally accepted accounting principles for hospitals that is reported on Worksheet G-3, Column 1, Line 3, of the medicare cost report, excluding long-term care inpatient ancillary revenues.

**71-5-703. Imposition of annual coverage assessment — When effective — Use of proceeds. [Effective until June 30, 2014.]**

(a) There is imposed on each covered hospital licensed as of July 1, 2013, an annual coverage assessment for fiscal year (FY) 2013-2014 as set forth in this part.

(b) The annual coverage assessment imposed by this part shall not be effective and validly imposed until the bureau has provided the Tennessee Hospital Association with written notice that includes:

(1) A determination from CMS that the annual coverage assessment is a permissible source of revenue that shall not adversely affect the amount of federal financial participation in the TennCare program;

(2) Approval from CMS for the distribution of additional payments to hospitals to offset unreimbursed TennCare costs as set forth in § 71-5-705(d)(2); and

(3) Evidence that the TennCare Bureau will implement the remaining rate changes effective July 1, 2013, that establish a floor and ceiling for hospital reimbursement that reduce the amount of variation in reimburse-

ment rates to hospitals for the same or similar services.

(c) The general assembly intends that the proceeds of the annual coverage assessment not be used as a justification to reduce or eliminate the state funding to the TennCare program. To this end, the annual coverage assessment shall not be effective and validly imposed if the coverage or the amount of revenue available for expenditure by the TennCare program in FY 2013-2014 is less than:

(1) The governor's FY 2013-2014 recommended budget level; plus

(2) All annual appropriations made by the general assembly to the TennCare program for FY 2013-2014, except to the extent new federal funding is available to replace funds that are appropriated as described in subdivision (c)(1) and that are above the amount that the state receives from CMS under the regular federal matching assistance percentage.

(d)(1)(A) The general assembly intends that the proceeds of the annual coverage assessment not be used as justification for any TennCare managed care organization to implement across the board rate reductions to negotiated rates with covered or excluded hospitals or physicians in existence on July 1, 2013. To this end, for those rates in effect on July 1, 2013, the bureau shall include provisions in the managed care organizations' contractor risk agreements that prohibit the managed care organizations from implementing across the board rate reductions to covered or excluded network hospitals or physicians either by category or type of provider. The requirements of the preceding sentence shall also apply to services or settings of care that are ancillary to a covered or excluded hospital or physician's primary license, but shall not apply to reductions in benefits or reimbursement for such ancillary services if:

(i) Such reductions are different from those items being restored in § 71-5-705(d); and

(ii) Such reductions have been communicated in advance of implementation to the general assembly and the Tennessee Hospital Association.

(B) For purposes of this subsection (d), services or settings of care that are ancillary to a covered or excluded hospital or physician's primary license shall include all services where the physician or covered or excluded hospital, including a wholly owned subsidiary or controlled affiliate of a covered or excluded hospital or hospital system, holds more than a fifty percent (50%) controlling interest in such ancillary services or settings of care, but shall not include any other ancillary services or settings of care. For across the board rate reductions to ancillary services or settings of care, the bureau shall include appropriate requirements for notice to providers in the managed care organizations' contractor risk agreements. For purposes of this subsection (d), services or settings of care that are "ancillary" mean, but is not limited to, ambulatory surgical facilities, outpatient treatment clinics or imaging centers, dialysis centers, home health and related services, home infusion therapy services, outpatient rehabilitation or skilled nursing services. For purposes of this subsection (d), "physician" includes a physician licensed under title 63, chapter 6 or chapter 9 and a group practice of physicians that hold a contract with a managed care organization.

(2) This subsection (d) does not preclude good faith negotiations between managed care organizations and covered or excluded hospitals, hospital

systems and physicians on an individualized, case-by-case basis, nor is this subsection (d) intended by the general assembly to serve as justification for Tennessee managed care organizations, covered or excluded hospitals, hospital systems or physicians to unreasonably deny any party the ability to enter into such individualized, case-by-case “good faith” negotiations. Such “good faith” negotiation necessarily implies mutual cooperation between the negotiating parties and may include, but is not limited to, the right to terminate contractual agreements, the ability to modify negotiated rates, pricing or units of service, the ability to alter payment methodologies, and the ability to enforce existing managed care techniques or implement new managed care techniques.

(3) Notwithstanding the other provisions of this subsection (d), if CMS mandates a TennCare program change or a change is required by federal law that impacts rates and that is required to be implemented by the MCOs in accordance with their contracts, or the annual coverage assessment becomes invalid, then nothing in this part shall prohibit the managed care organizations from implementing any rate changes as may be mandated by TennCare or federal law.

**71-5-704. Assessment rate — Payments — Collections — Prorations — Disciplinary acts — Civil action for delinquencies. [Effective until June 30, 2014.]**

(a) The annual coverage assessment established for this part shall be four and fifty-two hundredths percent (4.52%) of a covered hospital’s annual coverage assessment base.

(b) The annual coverage assessment shall be paid in equal quarterly installments, with the first quarterly payment due on the fifteenth day of the first month of the first quarter of the state fiscal year after the bureau has obtained the determination and approval from CMS described in § 71-5-703(b). Subsequent installments shall be due on the fifteenth day of the first month of the three (3) successive calendar quarters following the calendar quarter in which the first installment is due.

(c) To facilitate collection of the annual coverage assessment, the bureau shall send to each covered hospital, at least thirty (30) days in advance of each quarterly payment due date, a notice of payment along with a return form developed by the bureau. Failure of a covered hospital to receive a notice and return form, however, shall not relieve a covered hospital from the obligation of timely payment. The bureau shall also post the return form on its web site.

(d) Failure of a covered hospital to pay a quarterly installment of the annual coverage assessment when due shall result in an imposition of a penalty of five hundred dollars (\$500) per day until such installment is paid in full.

(e) If a covered hospital ceases to operate after July 1, 2013, and before July 1, 2014, its total annual coverage assessment shall be equal to its annual coverage assessment base multiplied by a fraction, the denominator of which is the number of calendar days from July 1, 2013, until July 1, 2014, and the numerator of which is the number of days from July 1, 2013, until the date the Tennessee division of health care facilities has recorded as the date that the hospital ceased operation.

(f) If a covered hospital ceases operation prior to payment of its full annual coverage assessment, then the person or persons controlling the hospital as of

the date the hospital ceased operation shall be jointly and severally responsible for any remaining annual coverage assessment installments and unpaid penalties associated with previous late payments.

(g) If a covered hospital fails to pay a quarterly installment of the annual coverage assessment within thirty (30) days of its due date, the bureau shall report such failure to the department which licenses the covered hospital. Notwithstanding any other law, failure of a covered hospital to pay a quarterly installment of the annual coverage assessment or any refund required by this part shall be considered a license deficiency and grounds for disciplinary action as set forth in the statutes and rules under which the covered hospital is licensed.

(h) In addition to the action required by subsection (g), the bureau is authorized to file a civil action against a covered hospital and its controlling person or persons to collect delinquent annual coverage assessment installments, late penalties and refund obligations established by this part. Exclusive jurisdiction and venue for a civil action authorized by this subsection (h) shall be in the chancery court for Davidson County.

(i)(1) If any federal agency with jurisdiction over this annual coverage assessment determines that the annual coverage assessment is not a valid source of revenue or that the methodology for distribution of the additional payments to hospitals from the annual coverage assessment is not valid after an installment has been collected, or if there is a reduction of the coverage and funding of the TennCare program contrary to § 71-5-703(c), or if one (1) or more managed care organizations impose rate reductions contrary to § 71-5-703(d), then:

(A) The bureau shall refund to covered hospitals all installment payments previously collected within forty-five (45) days of such event;

(B) No subsequent installments of the annual coverage assessment shall be due and payable; and

(C) Covered hospitals that received payments pursuant to § 71-5-705(d)(2) shall refund to the bureau all such payments within forty-five (45) days of such event, or shall establish a payment plan that has been approved by the bureau within forty-five (45) days of such event.

(2) The bureau will then have authority to make necessary changes to the TennCare budget to account for the loss of the annual coverage assessment revenue.

(j) A covered hospital or an association, the membership of which includes thirty (30) or more covered hospitals, shall have the right to file a petition for declaratory order pursuant to § 4-5-223 to determine if there has been a failure to satisfy one (1) of the conditions precedent to the valid imposition of the annual coverage assessment.

(k) A covered hospital may not increase charges or add a surcharge based on or as a result of the annual coverage assessment.

(l) Notwithstanding any other provision of this part, if the bureau receives from CMS notification of the determination and approval set forth in § 71-5-703(b), and if such determination and approval have retroactive effective dates, then:

(1) Quarterly annual coverage assessment payments that become due by application of the retroactive determination date from CMS shall be paid to the bureau within thirty (30) days of the bureau notifying the Tennessee Hospital Association that CMS has issued such determination; and

(2) Quarterly payments to covered hospitals required by § 71-5-705(d)(2) that become due by application of the retroactive approval date from CMS shall be paid within fifteen (15) days of the bureau notifying the Tennessee Hospital Association that CMS has issued such approval.

**71-5-705. Maintenance of coverage trust fund. [Effective until June 30, 2014.]**

(a) The funds generated as a result of this part shall be deposited in the maintenance of coverage trust fund created by the section formerly codified as § 71-5-1005, extended by §§ 71-5-1006, 71-5-2006, and 71-5-2706, and by § 71-5-160, the existence of which is continued by subsection (b). The fund shall not be used to replace any moneys otherwise appropriated to the TennCare program by the general assembly or to replace any moneys appropriated outside of the TennCare program.

(b) Notwithstanding the section formerly codified as § 71-5-1006, the maintenance of coverage trust fund created by the section formerly codified as § 71-5-1005, extended by §§ 71-5-1006, 71-5-2006, and 71-5-2706, and by § 71-5-160, shall continue without interruption and shall be operated in accordance with this section.

(c) The maintenance of coverage trust fund shall consist of:

(1) All annual coverage assessments received by the bureau; and

(2) Investment earnings credited to the assets of the maintenance of coverage trust fund.

(d) Moneys credited or deposited to the maintenance of coverage trust fund together with all federal matching funds shall be available to and used by the bureau only for expenditures in the TennCare program and shall include the following purposes:

(1) Expenditure for benefits and services under the TennCare program that would have been subject to reduction or elimination from TennCare funding for FY 2012-2013, except for the availability of one-time funding for that year only, as follows:

(A) Replacement of seven percent (7%) reduction in covered and excluded hospital and professional reimbursement rates described in the governor's FY 2013-2014 recommended budget;

(B) Maintenance of essential access hospital payments of at least one hundred million dollars (\$100,000,000);

(C) Maintenance of payments to critical access hospitals to achieve reimbursement of full cost of benefits provided to TennCare enrollees up to sixteen million dollars (\$16,000,000);

(D) Maintenance of payments for the graduate medical education of at least fifty million dollars (\$50,000,000);

(E) Maintenance of reimbursement for medicare part A crossover claims at the lesser of one hundred percent (100%) of medicare allowable or the billed amount;

(F) Funding to increase the rates for the lowest paid hospitals to reduce the amount of variation in TennCare hospital rates for the same or similar services;

(G) Avoidance of any coverage limitations relative to the number of hospital inpatient days per year or annual cost of inpatient services for a TennCare enrollee;

(H) Avoidance of any coverage limitations relative to the number of non-emergency outpatient visits per year for a TennCare enrollee;

(I) Avoidance of any coverage limitations relative to the number of physician office visits per year for a TennCare enrollee;

(J) Avoidance of coverage limitations relative to the number of laboratory and diagnostic imaging encounters per year for a TennCare enrollee;

(K) Maintenance of coverage for occupational therapy, physical therapy and speech therapy services; and

(L) Making medicaid disproportionate share hospital payments at the maximum amount authorized by the federal Social Security Act for FY 2013-2014;

(2)(A) Solely from the annual coverage assessment payments received by the bureau, payments to covered hospitals to offset losses incurred in providing services to TennCare enrollees as set forth in this subdivision (d)(2);

(B) Each covered hospital shall be entitled to payments for FY 2013-2014 of a portion of its unreimbursed cost of providing services to TennCare enrollees. Unreimbursed TennCare costs are defined as the excess of cost over TennCare net revenue as reported on the hospital's 2011 joint annual report filed with the department of health. TennCare costs are defined as the product of a facility's cost-to-charge ratio times TennCare charges. The amount of the payment to covered hospitals shall be no less than fifty-four and two tenths percent (54.20%) of unreimbursed TennCare cost for all hospitals licensed by the state of Tennessee excluding state owned hospitals;

(C) The payments required by this subdivision (d)(2) shall be made in four (4) equal installments. Each installment payment shall be made by the third business day of four (4) successive calendar quarters, with the first calendar quarter to be the calendar quarter in which the annual coverage assessment is first levied in accordance with § 71-5-704. The bureau shall provide to the Tennessee Hospital Association a schedule showing the quarterly payments to each hospital at least seven (7) days in advance of such payments;

(D) The payments required by this subdivision (d)(2) may be made by the bureau directly to the hospitals or the bureau may transfer the funds to one (1) or more managed care organizations with the direction to make payments to hospitals as required by this subsection (d). The payments to a hospital pursuant to this subdivision (d)(2) shall not be considered as part of the reimbursement to which a hospital is entitled under its contract with a TennCare managed care organization; and

(3) Refunds to covered hospitals on the basis of payment of annual coverage assessments or penalties to the bureau through error, mistake, or a determination that the annual coverage assessment was invalidly imposed.

(e) If a hospital closes or changes status from a covered hospital to an excluded hospital and consequently reduces the amount of the annual coverage assessment such that the amount is no longer sufficient to cover the total cost of the items included in subsection (d), the payments for these items may be adjusted by an amount equal to the shortfall including the federal financial participation. The items to be adjusted and the amounts of the adjustments shall be determined by the bureau in consultation with hospitals.

(f) The bureau shall modify the contracts with TennCare managed care

organizations and otherwise take action necessary to assure the use and application of the assets of the maintenance of coverage trust fund, as described in subsection (d).

(g) The bureau shall submit requests to CMS to modify the medicaid state plan, the contractor risk agreements or the TennCare II Section 1115 demonstration project as necessary to implement the requirements of this part.

(h) At quarterly intervals beginning September 1, 2013, the bureau shall submit a report to the finance, ways and means committees of the senate and house of representatives, to the health and welfare committee of the senate and to the health committee of the house of representatives, which report shall include:

- (1) The status if applicable of the determination and approval by CMS set forth in § 71-5-703(b) of the annual coverage assessment;
- (2) The balance of funds in the maintenance of coverage trust fund; and
- (3) The extent of which the maintenance of coverage trust fund has been used to carry out this part.

(i) No part of the maintenance of coverage trust fund shall be diverted to the general fund or used for any purpose other than set forth in this part.

**71-5-706. Repealer — Survival of rights and obligations. [Effective until June 30, 2014.]**

This part shall expire on June 30, 2014; provided, however, that the following rights and obligations shall survive such expiration:

- (1) The authority of the bureau to impose late payment penalties and to collect unpaid annual coverage assessments and required refunds;
- (2) The rights of a covered hospital or an association of covered hospitals to file a petition for declaratory order to determine whether the annual coverage assessment has been validly imposed; and
- (3) The existence of the maintenance of coverage trust fund and the obligation of the bureau to use and apply the assets of the maintenance of coverage trust fund.

**71-5-1422. Pilot project for disabled individuals and family members to self-direct supports and services.**

(a) The commission on aging and disability shall develop a pilot project proposal in accordance with this section. The long-term care services planning council shall be responsible for evaluating the implementation of the project. If funded in the general appropriations act, the pilot project shall be implemented and shall continue for three (3) years. The commission shall annually report on the pilot project to the council, the health and welfare committee of the senate and the health committee of the house of representatives. At the end of the project the commission shall report on the project to the council and to the standing committees of the senate and the house of representatives. The council shall also make reports of any evaluations that it might undertake of the project to the standing committees of the senate and the house of representatives.

(b) The commission on aging and disability shall develop a pilot project in a county or counties of one (1) of the area agencies on aging and disability (AAAD) and shall enter into a contract with the selected AAAD in order to implement the project. The project shall utilize the services of an aging and

disability resource center located in the AAAD. Subject to any approvals required from the commission by the contract, a working group from the selected AAAD shall design the project and determine whether to use a program manager in the project. In selecting the AAAD, the commission shall consider any administrative and oversight efficiencies that locating the project in any particular AAAD might afford the project.

(c) The project shall offer families with a member with a disability who requires long-term supports and services and individuals with a disability who require long-term supports and services opportunities to direct their own services. The families and individuals shall exercise choice, control and responsibility for their services within a cost neutral framework.

(d) The project may involve the following:

- (1) Personal control and choice;
- (2) Encouragement of cost-effective decision-making in the purchase of supports and services;
- (3) Allowing eligible families and individuals to receive a cash allowance or an individual budget to obtain personal assistant services and related supports; and
- (4) Providing fiscal agent and supportive broker services to sustain individuals and families in directing their own services.

**71-5-2508. Medicaid fraud control unit.**

There is established a medicaid fraud control unit, which is separate and distinct from the state medicaid agency, within the criminal investigation division of the Tennessee bureau of investigation or within another appropriate agency at the discretion of the governor. As regulated by federal law, the unit is authorized to investigate and refer for prosecution violations of all applicable laws pertaining to provider or vendor fraud and abuse in the administration of the medicaid program, the provision of goods or services or the activities of providers of goods or services under the state medicaid plan; medicare fraud; and abuse or neglect in healthcare facilities receiving payments under the state medicaid plan, such as board and care facilities as allowed by federal law. A summary of the unit's work shall be included in a report which shall be submitted annually to the governor, judiciary committee of the senate, and criminal justice committee of the house of representatives.

**71-5-2512. Cash reward program for reporting criminal fraud by recipients of the TennCare program.**

(a) The office of inspector general shall establish an incentive program to provide a cash reward to citizens who notify the office of inspector general of criminal fraud by recipients of the TennCare program. The cash reward shall be paid if the information provided by the citizen results in a criminal conviction. Such cash awards shall be set at a meaningful amount through a schedule to be established by the office of inspector general.

(b) The office of inspector general shall furnish information to acquaint the public with the existence of the program and the means by which citizens may participate.

(c) The commissioner of finance and administration shall use the commissioner's rule-making authority under this chapter to promulgate rules establishing the program mandated by subsection (a).

(d) The office of inspector general shall file with the commerce and labor

committee of the senate, and the insurance and banking committee of the house of representatives, by February 15 of each year, an annual report of all moneys paid to citizens pursuant to the program established by this section.

**71-5-2601. Offenses — Penalties — Remedies — Limitations.**

(a)(1)(A) A person, including an enrollee, recipient, or applicant, commits an offense who knowingly obtains, or attempts to obtain, or aids or abets any person to obtain, by means of a willfully false statement, representation, or impersonation, or by concealment of any material fact, or by any other fraudulent means, or in any manner not authorized by any rule, regulation, or statute governing TennCare:

(i) Medical assistance benefits or any assistance provided pursuant to any rule, regulation, procedure, or statute governing TennCare to which such person is not entitled, or of a greater value than that to which such person is authorized;

(ii) Benefits by knowingly making a willfully false statement, or concealing a material fact relating to personal or household income, thereby resulting in the assessment of a lower monthly premium than the person would be required to pay if not for the false statement or concealment of a material fact; or

(iii) Controlled substance benefits by knowingly, willfully and with the intent to deceive, failing to disclose to a physician, nurse practitioner, ancillary staff, or other health care provider from whom the person obtains a controlled substance, or a prescription for a controlled substance, that the person has received either the same controlled substance or a prescription for the same controlled substance, or a controlled substance of similar therapeutic use or a prescription for a controlled substance of similar therapeutic use, from another practitioner within the previous thirty (30) days and the person used TennCare to obtain the benefits.

(B) An offense under subdivision (a)(1)(A) is a Class E felony.

(2)(A) A person, firm, corporation, partnership or any other entity, including a vendor, other than an enrollee, recipient, or applicant, commits an offense who knowingly obtains, or attempts to obtain, or aids or abets any person or entity to obtain, by means of a willfully false statement, report, representation, claim or impersonation, or by concealment of any material fact, or by any other fraudulent means, including knowingly presenting or causing to be presented to TennCare or any of its contractors, subcontractors or vendors a false or fraudulent claim for payment or approval, or in any manner not authorized by any rule, regulation, procedure, or statute governing TennCare, medical assistance payments provided pursuant to any rule, regulation, procedure, or statute governing TennCare to which the person or entity is not entitled, or of a greater value than that to which the person or entity is authorized. For purposes of this subsection (a), “attempts to obtain” includes making or presenting to any person a claim for any payment under any rule, regulation, procedure, or statute governing TennCare, knowing the claim to be false, fictitious or fraudulent.

(B) An offense under subdivision (a)(2)(A) is a Class D felony unless the value of the property or services obtained meets the threshold set for a Class B or Class C offense under § 39-14-105, in which case the appro-

priate higher class shall apply. In addition to any other penalty, a sentence that includes a fine, when imposed upon an entity or upon a person for actions benefiting an entity, shall include the corporation fine specified in § 40-35-111.

(3)(A) A person, firm, corporation, partnership or any other entity commits an offense when providing a willfully false statement regarding another's medical condition or eligibility for insurance, to aid or abet another in obtaining or attempting to obtain medical assistance payments, medical assistance benefits or any assistance provided under any rule, regulation, procedure, or statute governing TennCare to which the person is not entitled or to a greater value than that to which such person is authorized. For purposes of this subsection (a), "attempting to obtain" includes making or presenting to any person a claim for any payment under any rule, regulation, procedure, or statute governing TennCare, knowing such claim to be false, fictitious or fraudulent.

(B) An offense under subdivision (a)(3)(A) is a Class D felony unless the value of the property or services obtained meets the threshold set for a Class B or Class C offense under § 39-14-105, in which case the appropriate higher class shall apply. In addition to any other penalty, a sentence that includes a fine, when imposed upon an entity or upon a person for actions benefiting an entity, shall include the corporation fine specified in § 40-35-111.

(4) Any person, firm, corporation, partnership or other entity is guilty of a Class D felony that, in connection with the investigation of a violation of offenses set forth in this section, knowingly and willfully:

(A) Falsifies, conceals or omits by any trick, scheme, artifice, or device a material fact;

(B) Makes any materially false, fictitious or fraudulent statement or representation; or

(C) Makes or uses any materially false writing or document.

(5)(A) A person commits an offense who knowingly sells, delivers, or aids and abets any person in the sale or delivery of a drug and used TennCare to obtain the drug.

(B) As used in this subdivision (a)(5), "drug", "deliver" and "delivery" shall have the same meaning as set forth in § 39-17-402.

(C) This subdivision (a)(5) shall not apply to any duly licensed physician, nurse practitioner, pharmacist, or other provider authorized to issue or dispense a prescription acting in good faith in the course of his or her profession.

(D) An offense under this subdivision (a)(5) is a Class E felony.

(b) In addition to any other penalties provided for any person, firm, corporation, partnership or other entity under subsection (a), the court shall also:

(1)(A) Order restitution to TennCare in the greater of the total amount of all medical assistance payments made to all providers, or the total amount of all payments to a managed care entity, related to the services underlying the offense; and

(B) Report the person or entity to the appropriate professional licensure board or the department of commerce and insurance for disciplinary action.

(2) In addition to any other penalties provided under this section, the court may also, to the full extent permitted by federal law and the TennCare

waiver as interpreted by the CMS, order any such person or entity disqualified from participation in the medical assistance program; such disqualification may also apply to any person who is convicted of a criminal offense involving the selling of prescription drugs obtained through the TennCare program. Any person or entity disqualified from participation in the medical assistance program shall make restitution in the total amount of the medical assistance or underpayment which forms the basis for the conviction before such person or entity can reenroll in the TennCare program.

(3) A subsequent denial of eligibility or denial of a claim for payment does not, of itself, establish proof of falsity of a statement, representation, report or claim for payment under subsection (a).

(c) Nothing in this section shall be construed as prohibiting a person or entity violating this section from being prosecuted for theft of property or services under title 39, chapter 14.

(d) In addition to any other remedy available, including those provided in this section, the state may recover from any person or such person's estate, or from a firm, corporation, partnership or other entity, including a vendor, the amount of medical assistance benefits or payments improperly paid as a result of fraudulent means or actions not authorized by any rule, regulation, procedure, or statute governing TennCare.

(e) Notwithstanding any other law to the contrary, prosecutions for violations of this section shall be commenced within four (4) years after the commission of the offense.

**71-5-2701. [Repealed.]**

**71-5-2702. [Repealed.]**

**71-5-2703. [Repealed.]**

**71-5-2704. [Repealed.]**

**71-5-2705. [Repealed.]**

**71-5-2706. [Repealed.]**

**71-6-102. Part definitions.**

As used in this part, unless the context otherwise requires:

(1)(A) "Abuse or neglect" means the infliction of physical pain, injury, or mental anguish, or the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult or a situation in which an adult is unable to provide or obtain the services that are necessary to maintain that person's health or welfare. Nothing in this part shall be construed to mean a person is abused or neglected or in need of protective services for the sole reason that the person relies on or is being furnished treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing in lieu of medical treatment; further, nothing in this part shall be construed to require or authorize the provision of medical care to any terminally ill person if such person has executed an unrevoked living will in accordance with the

Tennessee Right to Natural Death Act, compiled in title 32, chapter 11, and if the provision of such medical care would conflict with the terms of such living will;

(B) "Abuse or neglect" means transporting an adult and knowingly abandoning, leaving or failing to provide additional planned transportation for the adult if the adult's caretaker knows, or should know, that:

(i) The adult is unable to protect or care for himself or herself without assistance or supervision; and

(ii) The caretaker's conduct causes any of the results listed in subdivision (1)(A) or creates a substantial risk of such results;

(2) "Adult" means a person eighteen (18) years of age or older who because of mental or physical dysfunctioning or advanced age is unable to manage such person's own resources, carry out the activities of daily living, or protect such person from neglect, hazardous or abusive situations without assistance from others and who has no available, willing, and responsibly able person for assistance and who may be in need of protective services; provided, however, that a person eighteen (18) years of age or older who is mentally impaired but still competent shall be deemed to be a person with mental dysfunction for the purposes of this chapter;

(3) "Advanced age" means sixty (60) years of age or older;

(4) "Capacity to consent" means the mental ability to make a rational decision, which includes the ability to perceive, appreciate all relevant facts and to reach a rational judgment upon such facts. A decision itself to refuse services cannot be the sole evidence for finding the person lacks capacity to consent;

(5) "Caretaker":

(A) Means an individual or institution who has assumed the duty to provide for the care of the adult by contract or agreement;

(B) Includes a parent, spouse, adult child or other relative, both biological or by marriage, who:

(i) Resides with or in the same building with or regularly visits the adult;

(ii) Knows or reasonably should know of the adult's mental or physical dysfunction or advanced age; and

(iii) Knows or reasonably should know that the adult is unable to adequately provide for the adult's own care; and

(C) Does not mean a financial institution as a caretaker of funds or other assets unless such financial institution has entered into an agreement to act as a trustee of such property or has been appointed by a court of competent jurisdiction to act as a trustee with regard to the property of the adult;

(6) "Commissioner" means the commissioner of human services;

(7) "Department" means the department of human services;

(8) "Exploitation" means the improper use by a caretaker of funds that have been paid by a governmental agency to an adult or to the caretaker for the use or care of the adult;

(9) "Imminent danger" means conditions calculated to and capable of producing within a relatively short period of time a reasonable probability of resultant irreparable physical or mental harm or the cessation of life, or both, if such conditions are not removed or alleviated. However, the department is not required to assume responsibility for a person in imminent danger pursuant to this chapter except when, in the department's

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determination, sufficient resources exist for the implementation of this part;

(10) "Investigation" includes, but is not limited to, a personal interview with the individual reported to be abused, neglected, or exploited. When abuse or neglect is allegedly the cause of death, a coroner's or doctor's report shall be examined as part of the investigation;

(11) "Protective services" means services undertaken by the department with or on behalf of an adult in need of protective services who is being abused, neglected, or exploited. These services may include, but are not limited to, conducting investigations of complaints of possible abuse, neglect, or exploitation to ascertain whether or not the situation and condition of the adult in need of protective services warrants further action; social services aimed at preventing and remedying abuse, neglect, and exploitation; services directed toward seeking legal determination of whether the adult in need of protective services has been abused, neglected or exploited and procurement of suitable care in or out of the adult's home;

(12) "Relative" means spouse; child, including stepchild, adopted child or foster child; parents, including stepparents, adoptive parents or foster parents; siblings of the whole or half-blood; step-siblings; grandparents; grandchildren, of any degree; and aunts, uncles, nieces and nephews; and

(13) "Sexual abuse" occurs when an adult, as defined in this chapter, is forced, tricked, threatened or otherwise coerced by a person into sexual activity, involuntary exposure to sexually explicit material or language, or sexual contact against such adult's will. Sexual abuse also occurs when an adult, as defined in this chapter, is unable to give consent to such sexual activities or contact and is engaged in such activities or contact with another person.

**2010 COUNTY POPULATION FIGURES WITH RANGES (TCA § 1-3-116(a))**  
**COUNTY POPULATION FIGURES WITH RANGES**

<b><u>RANK</u></b>	<b><u>COUNTY</u></b>	<b><u>POPULATION</u></b>	<b><u>RANGE</u></b>
95	Pickett	5,077	5,000 – 5,100
94	Van Buren	5,548	5,500 – 5,600
93	Moore	6,362	6,300 – 6,400
92	Hancock	6,819	6,800 – 6,900
91	Lake	7,832	7,800 – 7,850
90	Clay	7,861	7,851 – 7,865
89	Trousdale	7,870	7,866 – 7,900
88	Perry	7,915	7,901 – 8,000
87	Houston	8,426	8,400 – 8,500
86	Jackson	11,638	11,600 – 11,700
85	Meigs	11,753	11,701 – 11,755
84	Decatur	11,757	11,756 – 11,800
83	Lewis	12,161	12,100 – 12,200
82	Bledsoe	12,876	12,800 – 12,900
81	Stewart	13,324	13,300 – 13,400
80	Grundy	13,703	13,700 – 13,750
79	Cannon	13,801	13,800 – 13,900
78	Sequatchie	14,112	14,100 – 14,200
77	Crockett	14,586	14,500 – 14,600
76	Benton	16,489	16,400 – 16,500

<b><u>RANK</u></b>	<b><u>COUNTY</u></b>	<b><u>POPULATION</u></b>	<b><u>RANGE</u></b>
75	Polk	16,825	16,800 – 16,900
74	Wayne	17,021	17,000 – 17,100
73	Chester	17,131	17,101 – 17,200
72	Fentress	17,959	17,900 – 18,000
71	Johnson	18,244	18,200 – 18,300
70	Unicoi	18,313	18,301 – 18,400
69	Humphreys	18,538	18,500 – 18,600
68	DeKalb	18,723	18,700 – 18,750
67	Haywood	18,787	18,751 – 18,800
66	Union	19,109	19,100 – 19,150
65	Smith	19,166	19,151 – 19,200
64	Morgan	21,987	21,900 – 22,000
63	Overton	22,083	22,001 – 22,100
62	Scott	22,228	22,200 – 22,245
61	Macon	22,248	22,246 – 22,300
60	Grainger	22,657	22,600 – 22,675
59	Hickman	24,690	24,676 – 24,700
58	White	25,841	25,800 – 25,900
57	Hardin	26,026	26,000 – 26,050
56	McNairy	26,075	26,051 – 26,100
55	Hardeman	27,253	27,200 – 27,300
54	Henderson	27,769	27,700 – 27,800
53	Lauderdale	27,815	27,801 – 27,900
52	Marion	28,237	28,200 – 28,300
51	Carroll	28,522	28,500 – 28,600
50	Giles	29,485	29,400 – 29,500
49	Marshall	30,617	30,600 – 30,700
48	Obion	31,807	31,701 – 31,807
47	Rhea	31,809	31,808 – 31,900
46	Claiborne	32,213	32,200 – 32,300
45	Henry	32,330	32,301 – 32,400
44	Lincoln	33,361	33,300 – 33,400
43	Weakley	35,021	35,000 – 35,100
42	Cocke	35,662	35,600 – 35,700
41	Dyer	38,335	38,300 – 38,400
40	Fayette	38,413	38,401 – 38,500
39	Cheatham	39,105	39,100 – 39,200
38	Warren	39,839	39,800 – 39,900
37	Campbell	40,716	40,700 – 40,800
36	Franklin	41,052	41,000 – 41,100
35	Lawrence	41,869	41,800 – 41,900
34	Monroe	44,519	44,500 – 44,600
33	Bedford	45,058	45,000 – 45,100
32	Loudon	48,556	48,500 – 48,600
31	Dickson	49,666	49,550 – 49,675
30	Gibson	49,683	49,676 – 49,800
29	Jefferson	51,407	51,400 – 51,500
28	McMinn	52,266	52,200 – 52,300
27	Coffee	52,796	52,700 – 52,800
26	Roane	54,181	54,100 – 54,200

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<b><u>RANK</u></b>	<b><u>COUNTY</u></b>	<b><u>POPULATION</u></b>	<b><u>RANGE</u></b>
25	Cumberland	56,053	56,000 – 56,100
24	Hawkins	56,833	56,800 – 56,900
23	Carter	57,424	57,400 – 57,500
22	Tipton	61,081	61,000 – 61,100
21	Hamblen	62,544	62,500 – 62,600
20	Robertson	66,283	66,200 – 66,300
19	Greene	68,831	68,800 – 68,900
18	Putnam	72,321	72,300 – 72,400
17	Anderson	75,129	75,100 – 75,200
16	Maury	80,956	80,900 – 81,000
15	Sevier	89,889	89,800 – 89,900
14	Madison	98,294	98,200 – 98,300
13	Bradley	98,963	98,900 – 99,000
12	Wilson	113,993	113,900 – 114,000
11	Washington	122,979	122,900 – 123,000
10	Blount	123,010	123,001 – 123,100
9	Sullivan	156,823	156,800 – 156,900
8	Sumner	160,645	160,600 – 160,700
7	Montgomery	172,331	172,300 – 172,400
6	Williamson	183,182	183,100 – 183,200
5	Rutherford	262,604	262,600 – 262,700
4	Hamilton	336,463	336,400 – 336,500
3	Knox	432,226	432,200 – 432,300
2	Davidson	626,681	Metropolitan Form of Government of 500,000+
1	Shelby	927,644	Greater than 900,000

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